Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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November 30, 2009

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QUESTIONS PRESENTED

1. Whether, when States intentionally alter the language of a constitutional amendment proposed by Congress, such intentional alteration violates U.S. CONST. art. V, and prohibits their inclusion in the tally of States that ratified the proposed amendment.

2. Whether U.S. CONST. art. III, § 2 is violated when a court holds it lacks jurisdiction to review an alleged violation of U.S. CONST. art. V committed by a Secretary of State in performing administrative duties imposed by Congress.

3. Whether the refusal of the federal judiciary to address an argument that an underlying statute is repugnant to the Constitution deprives a criminal defendant of fundamental due process of law.

4. Whether a prosecution under 18 U.S.C. § 371 for selling tickets to attend off-shore seminars, where people peacefully assemble to hear speech critical of the government and nothing unlawful was done or advocated, is precluded by U.S. CONST. amend. I.

List of All Parties

The parties to the action in the District Court are:

United States of America, Plaintiff;
Claudia Constance Hirmer, Mark Steven Hirmer, Eugene Joseph Casternovia, Robert Leighton Pendell, Mark Barry Lyon, Ellen Meredith Stubenhaus, Joseph William McPhillips, Arnold Ray Manansala, Dover Eugene Perry, Michael Guy Leonard, Mark Daniel Leitner, Arthur Ramirez Merino, and Jeffrey Jean Jenks, Defendants.

The parties to the action in the Court of Appeals were:

Claudia Constance Hirmer and Mark Steven Hirmer, Petitioners;
Honorable M. Casey Rodgers, Judge of the United States District Court for the Northern District of Florida, Pensacola Division, Respondent.

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Opinions Below

The Opinion of the United States Court of Appeals for the Eleventh Circuit, filed November 6, 2009, denying the Hirmers' petition for writs of mandamus and prohibition. App. A., p. 1a.

The Order of the United States District Court for the Northern District of Florida, Pensacola Division, filed July 14, 2009, denying the Hirmers' pretrial motions to dismiss Counts 1 and 3 of the indictment on constitutional grounds. Doc. 491; App. B, pp. 40a-47a.

Jurisdiction

The Opinion of the Eleventh Circuit sought to be reviewed was filed November 6, 2009. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Federal Constitutional and Statutory Provisions Involved

1. U.S. CONST. amend. I, reads in relevant part: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. U.S. CONST. amend. V, reads in relevant part: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."

3. U.S. CONST. art. V, reads in relevant part: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, . . . which, . . . shall be valid to all Intents

and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States . . . ."

4. U.S. CONST. art. III, § 2, reads in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . to all Cases to which the United States shall be a Party . . . .

5. Revised Statute 205[1], at the time in question, read: "Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as part of the Constitution of the United States."

Statement of the Case

On August 21, 2008, the United States filed its indictment in *United States v. Hirmer, et. al.*, Case No. 3:08-cr-00079-MCR (N.D.Fla. Pensacola Div. Aug. 21, 2008). Count 1 charged Petitioners, Claudia Constance Hirmer, Mark Steven Hirmer (hereinafter "Hirmers") and eleven other defendants with both a conspiracy to defraud the IRS and conspiracy to commit wire fraud (18 U.S.C. § 371); Count 2 charged all defendants with conspiracy to commit money laundering (18 U.S.C.

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[1] Currently codified at 1 U.S.C. § 106(b).

§ 1956(a)(1)(B)(I)); Count 3 charged the Hirmers with one count of wilful intent to evade the payment of income tax for the calendar years 1996 through 2001 (26 U.S.C. §§ 7201 and [sic] 2; and Counts IV through XV charged various defendants with wire fraud (18 U.S.C. §§ 1343 and 2). The indictment also contained allegations of criminal forfeiture (18 U.S.C. § 982(a)(2). Doc. 3; App. C, pp. 166a-191a.

All counts of the indictment reference the allegations of Count I. Those allegations, pertinent here, include:

> "Pinnacle Quest International, also known as 'PQI' or 'Quest,' was a Panamanian business entity headquartered in Fort Walton Beach, Florida, and controlled by Claudia Constance Hirmer and Mark Steven Hirmer." Doc. 3, p. 1, ¶ 1; App. C, p. 167a.
>
> "PQI sold 'memberships' at three levels of participation: Q1 ($1,350.00), Q2 ($7,500.00) and Q3 ($18,750.00). **PQI members gained access to various presentations, conference calls, DVDs, CDs, and for Q2 and Q3 participants, offshore conferences organized by Claudia Hirmer.**" Doc. 3, p. 2, ¶ 3; App. C, p. 168a.
>
> "PQI contracted with various vendors who sought access to PQI members to **PROMOTE their theories** and sell their products. Most vendors sold their products exclusively through PQI. **PQI presented to its members lectures and materials** from individuals **who, among other topics, PROMOTED anti-tax**

theories, such as the notions that the 16th Amendment was never ratified and that no law required United States citizens to pay income taxes. PQI also presented **vendors who PROMOTED offshore corporate structures, debt elimination tactics and offshore investment opportunities.**" (Emphasis added). Doc. 3, p. 3, ¶ 6; App. C, pp. 168a-169a.

"All citizens of the United States were taxed on their worldwide income. *U.S. Const. amend XVI.* . . ." (Emphasis added). Doc. 3, p. 4, ¶ 11; App. C, pp. 170a-171a.

"After the demise of Global, Claudia Hirmer, Mark Hirmer and others created PQI in order to continue to **PROMOTE anti-government views** . . . ." (Emphasis added). Doc. 3, p. 7, ¶ 1; App. C, pp. 172a-173a.

"On or about October 15, 2003, Mark Hirmer sent an email to a potential PQI member promoting PQI's Q1 and Q2 products[2] and speakers who **ADVOCATE anti-government and anti-tax agendas.**" (Emphasis added). Doc. 3, p. 13, ¶ 24; App. C, p. 179a.

"On or before April 14, 2004, Claudia Hirmer made a recorded telephone call for the benefit of

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[2] The United States will not deny PQI's Q1 is a set of audio CDs and the Q2 and Q3 products are mere tickets to attend off-shore seminars where purchasers of the tickets peacefully assemble in a hotel conference room and listen to speech.

> PQI members, during which Claudia Hirmer encouraged members to buy two products sold by PQI Vendors, both of which promoted tax evasion by **ESPOUSING THE IDEA** that the IRS did not have the legal authority to tax income." (Emphasis added). Doc. 3, p. 15, ¶ 30; App. C, p. 181a.

In addition, there are numerous allegations that Claudia Hirmer, and sometimes Mark Hirmer, conducted Q2 and Q3 conferences. *See* Doc. 3, pp. 9-23, ¶¶ 12, 18, 25, 33, 35, 41, 52, 56, 58, 60, 64 and 65; App. C, pp. 177a-188a.

On January 23, 2009, the Hirmers filed a Request for Judicial Notice of Public Records and attached certified copies of documents from the United States National Archives and archival documents of various legislatures of the States, all of which pertain to the proceedings regarding the ratification of the Sixteenth Amendment. Doc. 303; App. B, pp. 136a-141a. To date, the District Court has not ruled on the request.

The United States also admitted that one of the reasons to seek pre-trial detention prior to the entry of a plea by one defendant was the fact that "[t]he defendant appeared to hold anti-government views as promoted by the PQI group as a whole." Doc. 245, p. 2.

On April 8, 2008, a mere four months before the filing of the indictment in this case, the Department of Justice issued its press release authored by Nathan J. Hochman, the Tax Division's Assistant Attorney General, announcing the creation of the "National Tax Defier Initiative," the first paragraph of which states:

> Today Nathan J. Hochman, Assistant Attorney General of the Justice Department's Tax Division, announced the creation of the National Tax Defier Initiative or TAXDEF. **The purpose of this initiative is to reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue and, where appropriate, prosecute those who take concrete action to defy and deny the fundamental validity of the tax laws.**[3] (Emphasis added).

On January 24, 2009, the Hirmers filed a Motion to Dismiss Counts 1 and 3 of the Indictment (Sixteenth Amendment Not Ratified) (Doc. 305; App. B, pp. 48a-68a); the Declaration of Jeffrey A. Dickstein in Support (Doc. 305-2; App. B, pp. 69a-103a); and a Memorandum in Support (Doc. 306; App. B, pp. 104a-135a).

These pleadings raised issues of first impression,[4] supported by official public records, including the authenticated, enrolled resolutions from the States, that: 1) numerous states intentionally altered the language of the proposed Sixteenth Amendment; 2) such intentional alterations by the States' Legislatures violate U.S. CONST. art. V; 3) the federal judiciary has the mandatory obligation to hear and decide such issues; 4) such judicial action is not precluded by either the "enrolled bill rule" or the "political question

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[3] http://www.usdoj.gov/opa/pr/2008/April/08_tax_275.html

[4] These issues of first impression are also currently before this Court in the case of *Benson v. United States*, Case No. 09-464 (filed Oct. 16, 2009).

doctrine"; 5) governmental reliance on case law not addressing these issues of first impression violates the "stare decisis doctrine"; and 6) refusing to consider the Hirmers' arguments denies them fundamental due process.

The District Court denied the Hirmers' motion without addressing any of the issues of first impression. Doc. 491; App. B, pp. 40a-47a. The Hirmers filed a motion for reconsideration because the District Court had not addressed the issues of first impression advanced by the Hirmers. Doc. 499. The District Court did not address these issues in its order denying the motion for reconsideration. Doc. 540. The Hirmers then filed a Petition for Writ of Mandamus in the Eleventh Circuit. The petition asked the Court of Appeals to require the District Court to address and rule on the issues raised by the Hirmers. App. B. On November 6, 2009, the Eleventh Circuit, in a one sentence order, denied the Petition for Writ of Mandamus without addressing any of the issues raised by the Hirmers. App. A, p. 1a.

On February 1, 2009, the Hirmers filed their Motion and Memorandum in Support of Dismissing Them from Count 1 (First Amendment). The Hirmers' motion raised the issues that: 1) the indictment charged the Hirmers with nothing more than speech and conduct protected by the First Amendment; 2) the indictment contained no allegations of specific illegal intent; and 3) the Hirmers' prosecution was motivated by the bad faith inherent in the "National Tax Defier Initiative." Doc. 333; App. B, pp. 142a-165a.

The District Court denied the Hirmers' motion. Doc. 491, App. B, pp. 40a-47a. Thereafter, the Hirmers'

filed a Petition for Writ of Prohibition in the Eleventh Circuit asking the Court of Appeals to prohibit the prosecution because it violated U.S. CONST. amend. I. App. B. On November 6, 2009, the Eleventh Circuit denied the Petition for Writ of Prohibition without addressing any of the issues raised by the Hirmers. App. A, p. 1a.

REASONS FOR GRANTING THE WRIT

The Provisions of the Internal Revenue Code Pertaining to the Federal Income Tax Are Unconstitutional as Imposing a Direct Tax That Is Not Apportioned as Required by U.S. CONST. art. I, § 2, cl. 3 and U.S. CONST. art. I, § 9, cl. 4 in That U.S. CONST. amend. XVI Was Not in Law, or Fact, Ratified by Three Fourths of the States as Required by U.S. CONST. art. V.

A. Less Than Thirty-Six States Ratified the Sixteenth Amendment as Proposed by Congress, and Secretary of State Knox's Declaration to the Contrary Violates U.S. CONST. art V.

In 1894, Congress passed a federal income tax act that imposed a tax on the total income of a citizen's worldwide income.[5] 28 Stat. 509, ch. 349, § 27. In 1895, this Court held that such a tax was a direct tax and, under the taxing clauses of the Constitution, was unconstitutional because not apportioned. *Pollock v.*

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[5] The indictment alleges today's federal income tax is also imposed on a citizen's worldwide income. Doc. 3, p. 4, ¶ 11; App. C, p. 170a.

Farmer's Loan & Trust Co., 157 U.S. 429, *aff. reh.*, 158 U.S. 601 (1895).

In 1909, President Taft asked Congress to propose a constitutional amendment to overcome the *Pollock* decision and allow the federal government the power to levy an income tax without apportionment. CONG. REC., Senate, pp. 3344-3345 (June 16, 1909). Congress, in response, passed S.J. Res. 40 in the following words:

> "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

S.J. Res. 40, 61st Cong., 1st Sess., (1909); App. D, pp. 196a-198a.

On or about July 26, 1909, Secretary of State Knox sent a certified copy of enrolled S.J. Res. 40 to the Governors of the forty-eight States for submission to the Legislatures of their States, and asked that certified copies of the action of the States be returned to him as required by Section 205 of the Revised Statutes of 1878. A copy of the transmittal letter, certified copy of S.J. Res. 40 and Section 205 are at App. D, pp. 194a-198a.

On February 10, 1913, the Chief of Bureau of the Secretary of State sent a memorandum to the Chief Clerk advising that thirty-six States had returned certified copies of their resolutions, but those resolutions incorrectly quoted the Resolution of Congress proposing the Amendment. The Chief of Bureau suggested the Secretary [of State] should refer

the question of the legality of the ratifications of these States to the Solicitor. App. D, pp. 200a-201a. That same day, the Office of the Chief Clerk recommended that the Secretary refer the matter to the Solicitor for a report as to whether the ratifications were in proper form. App. D, p. 199a.

On February 15, 1909, the Solicitor prepared a memorandum on the question of whether the notices of ratification by the several states of the proposed 16th amendment to the Constitution were in proper form. App. D, pp. 202a-229a. The Solicitor reported the Department of State had received information from forty-two States with reference to the action taken by the legislatures of those States. Of the forty-two States, four rejected the amendment.[6] App. D, pp. 204a-205a.

The Solicitor's memorandum reported that only four of the certified resolutions of the States quoted "absolutely accurately and correctly the 16th amendment as proposed by Congress. The resolutions of twenty-two States contained errors of capitalization or punctuation or both, while the resolutions of eleven states contained errors in the wording." Those eleven States were: Illinois, Mississippi, Oklahoma, Georgia, Idaho, Washington, California, Missouri, Arkansas, South Dakota and Delaware. App. D, pp. 212a-215a.

The Solicitor's memorandum then stated the following:

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[6] Forty-Two minus four equals thirty-eight.

In no case has any legislature signified in any way its deliberate intention to change the wording of the proposed amendment. **The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.**

Furthermore, **under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress,**[7] the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. It, therefore, **seems a necessary presumption**, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. **Moreover, it could not be presumed that by a mere change of wording, probably inadvertent**, the legislature had intended to

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[7] The Solicitor's statement that under the provisions of the Constitution, a State may not intentionally alter the language of the amendment proposed by Congress is correct. *See* AMES, THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR THE YEAR 1886, at 294 (Vol. II, Gov. Printing Office (1897); John W. Burgess, POLITICAL SCIENCE AND COMPARATIVE CONSTITUTIONAL LAW, Vol. 1. pp. 149-150 (1890); AMENDING THE FEDERAL CONSTITUTION–PROCEDURES OF THE GENERAL SERVICES ADMINISTRATION AND OF THE STATE LEGISLATURES, Report No. 80-89 A 731/77 at 8, Congressional Research Service (April 18, 1980).

> reject the amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. (Emphasis added.)

App. D, p. 228a.

Based upon this memorandum, Secretary of State Knox issued his declaration of ratification under Revised Statute 205. App. D, pp. 230a-232a.

This Court, in *Field v. Clark*, 143 U.S. 649 (1892), held that a duly attested enrolled bill of a legislative body "should be deemed complete and unimpeachable" evidence of what was passed by the legislative body, and is conclusive upon the courts. *Field*, 143 U.S. at pp. 672-74. If duly attested enrolled bills are conclusive upon the Courts, they should be conclusive upon the Executive Branch of Government too. Secretary of State Knox, and the Solicitor, however, ignored the duly attested, correctly enrolled resolutions of the States, and instead relied upon two presumptions, both of which, as will be shown below, were false.

The Public Records of the State of Missouri belie the first presumption that the error in Missouri's duly attested enrolled resolution was merely typographical, incident to an attempt to make an accurate quotation, and not intentional. Doc. 303-8, Exhibit D, pp. 1-6, submitted to the District Court as part of the Hirmers' Request for Judicial Notice of Public Records, is a copy of Senate Joint and Concurrent Resolution No. 8, certified by Missouri's Secretary of State as being a full, true and correct copy. App. F, pp. 239a-243a. Page

6 of that document shows the original handwritten version of the Resolution accurately quoted the language proposed by Congress in S.J. Res. 40. App. E, p. 243a. Page 4 of the document shows the language was also accurately quoted in the typographical version. App. E, p. 242a. Page 4 conclusively shows, however, that the typewritten word "lay" was intentionally crossed out, and replaced with the handwritten word "levy."[8]

The duly attested, enrolled resolution sent to the Department of State accurately and correctly reflects the intentional alteration of the original language proposed by Congress. App. E, pp. 233a-234a. The steps taken by the State of Missouri to insure what was sent to the Department of State was exactly what they intended to ratify are fully set forth in the Declaration of Jeffrey A. Dickstein, Exhibit A to the Hirmers' motion to dismiss (Doc. 305-2); each step set forth in the declaration is supported by the Public Records filed with the District Court. *See* Doc. 305-2, Exhibit A, pp. 2-4; App. B, pp. 71a-73a; and Doc. 303, Exhibits B, C and D.

The Public Records of the State of Oklahoma belie the other erroneous presumption that, because the States have no authority under the Constitution to alter the language proposed by Congress, that none intended to do so.

On March 3, 1910, in the Oklahoma Senate, Senator Graham introduced S. Con. Res. 23 which

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[8] Because the document has been typeset per the rules of this Court, the change is also typeset.

contained the precise wording of the Sixteenth Amendment proposed by Congress. Doc. 303-15, Exhibit J, p. 18; App. I, p. 304a. It was passed by the Senate the same day. Doc. 303-15, *id.*; App. I, p. 305a.

On March 4, 1910, in the Oklahoma House, the Committee on Engrossment reported H.J. Res. 5 pertaining to the proposed Sixteenth Amendment was correctly engrossed. Doc 303-14, Exhibit I, p.6; App. H, p. 296a. The resolution was read and by unanimous consent, Senator Graham was added as one of the authors. Doc. 303-13, Exhibit H, p. 69; App. G, p. 267a. It was thereafter passed by a vote of 89 yeas, 2 nays, with 17 absent. The Speaker declared the resolution was passed and signed the same in open session. Doc. 303-13, Exhibit H, p. 70; App. G, pp. 267a-268a. The same day, S. Con. Res. 23 was read in the House the first time and was referred to the Committee on Judiciary and Judicial Departments. Doc. 303-13, Exhibit H, p. 74; App. G, pp. 271a-272a.

On March 4, 1910, the Senate received a message from the House transmitting H.J. Res. 5, and it was read the first time. Doc. 303-15, Exhibit J, p. 20; App. I, p. 307a. On March 5, 1910, H.J. Res. 5 was read a second time and referred to the Committee on Legal Advisory. Doc. 303-15, Exhibit J, p. 22; App. I, p. 308a.

On March 9, 1910, the Committee on Legal Advisory reported its recommendation that H.J. Res. 5 be passed **as amended**. The resolution was placed on the calendar under the head of general orders. Doc. 303-15, Exhibit J. p. 25; App. I, pp. 311a-312a. Senator Thomas then asked unanimous consent to withdraw the report of the Committee on Legal Advisory on H.J.

Res. 5, and the request was granted. Doc. 303-15, Exhibit J, p. 26, App. I, p. 317a.

Later, Senator Thomas issued a new report on behalf of the Committee on Legal Advisory that H.J. Res. 5 **be amended, and pass as amended**. On motion of Senator Thomas, the report was adopted. H.J. Res. 5, **as amended,** was read. **On the question of whether the resolution pass as amended by the Senate**, the roll was called, and the vote was 37 yeas and no nays. The President then declared **the resolution, as amended by the Senate**, passed. **The engrossed copy of the resolution, as amended by the Senate**, was signed by President Pro Tempore, Mr. Graham, and ordered transmitted to the House. Doc. 303-15, Exhibit J, pp. 26-27; App. I, pp. 317a-320a.

On March 10, 1910, the House received a message from the Senate that it had passed **H.J. Res. 5 as amended**, and transmitted a copy, **with the amendments**, for House consideration. **The Senate amendments were read**, and **Mr. Terral moved that the House agree to the Senate amendments**. The House concurred by the vote of 91 yeas, no nays, with 17 absent. The Speaker declared the motion carried. Doc. 303-13, Exhibit H, pp. 108-109; App. G, pp. 277a-278a.

On March 10, 1910, the Senate received a message from the House transmitting the enrolled copy of H.J. Res. 5 signed by the Speaker. The enrolled copy was read a fourth time at length and signed by Mr. Graham. The signed enrolled copy was ordered transmitted to the House. Doc. 303-15, Exhibit J, p. 29; App. I, p. 321a.

The House then received a message from the Senate that the engrossed copy of H.J. Res. 5 had been compared with the enrolled copy and found to be correct, and was being transmitted to the House for signature. The enrolled copy was read at length and signed by the Speaker in open session. Doc. 303-13, Exhibit H, p. 111; App. G, p. 283a. Later, the House received a message from the Senate that the President pro tempore of the Senate had signed the enrolled version of H.J. Res. 5. Doc. 303-13, Exhibit H, p. 112; App. G, pp. 285a-286a.

A certified copy of the duly attested, correctly enrolled, H.J. Res. 5 sent to the Department of State contains the following language:

> Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several ~~S~~states, and ~~without regard to~~ **from** any census or enumeration.[9]

Doc. 303-16, Exhibit K, pp. 1-3; App. J, pp. 324a-325a; *see also* App. D, pp. 235a-238a.

The certified public records unequivocally show that while both houses of the Oklahoma Legislature could have ratified exactly what Congress had proposed by ratifying S. Con. Res. 23, they chose instead to ratify H.J. Res. 5 after they **intentionally altered** the language proposed by Congress.

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[9] The original language proposed by Congress is struck out; the intentional alterations by the Oklahoma legislature are bolded.

Such intentional alteration by the Oklahoma Legislature is, according to the Solicitor of the United States and every other legal scholar who ever addressed the issue, not authorized by U.S. CONST. art V. Oklahoma can not, therefore, be counted as a State that ratified the proposed Sixteenth Amendment in accordance with the provisions of the Constitution.

The Hirmers' motion to dismiss counts 1 and 3 of the indictment on the grounds that the Sixteenth Amendment was not ratified in accordance with the provisions of the Constitution shows the following States[10] affirmatively acted to ratify something other than what Congress proposed: Missouri, Washington, Oklahoma, Tennessee, Vermont, Maryland, Arkansas, California, Kentucky and South Dakota.[11] The inclusion of these States in the tally of States ratifying the proposed Sixteenth Amendment is a direct violation of U.S. CONST. art V.

B. The Federal Judiciary Is Obligated to Review the Administrative Acts of a Secretary of State to Insure Such Acts Do Not Violate the Constitution.

U.S. CONST. art. III, § 2, reads in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . to all Cases to which the United States shall be a Party

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[10] Due to space limitations, only Missouri and Oklahoma are analyzed and briefed in detail here; the same meticulous analysis is set forth, however, in Doc. 305-2; App. A, pp. 71a-103a.

[11] Thirty-eight minus ten is twenty-eight. Twenty-eight is less than thirty-six.

. . . ." *United States v. Hirmer, et al.*, Case No. 3:08-cr-00079-MCR (N.D.Fla. Pensacola Div. Aug. 21, 2008), where the Hirmers raised the issue whether or not U.S. CONST. art. V was violated, is a case arising under the Constitution to which the United States is a party. The case, therefore, falls within the judicial power.

This Court has succinctly ruled the federal judiciary has an obligation under the Constitution to review the administrative acts imposed by legislation upon a Cabinet official to insure the Cabinet official's acts do not violate the Constitution, and that such review is not precluded by the "political question doctrine." *See Marbury v. Madison*, 5 U.S. 137 (1803).

Revised Statute 205 imposed an administrative duty upon the Secretary of State regarding amendments to the Constitution. The review of the administrative acts of the Secretary of State is the very issue raised in the Hirmers' Motion to Dismiss Counts 1 and 3.[12] It is precisely the lower courts' refusal, on a national level,[13] to acknowledge they have an obligation to review those administrative acts that requires this Court grant a writ of certiorari.

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[12] This is the same issue raised by William J. Benson in his case now pending before this Court.

[13] *See United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236 (7th Cir. 1988); *Lysiak v. C.I.R.*, 816 F.2d 311 (7th Cir. 1987); *United States v. Sitka*, 845 F.2d 43 (2nd. Cir. 1988); *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991); *see also Pollard v. Commissioner*, 816 F.2d 603 (11th Cir. 1987); and *Stubbs v. Commissioner of I.R.S.*, 797 F.2d 936 (11th Cir. 1986).

The administrative duty imposed upon Secretary of State Knox by Rev. Stat. 205 was to review the "official notices" received from the States, make sure the States' adopted the proposed Sixteenth Amendment "according to the provisions of the Constitution," and if so, issue a declaration to that effect.

The "official notices" received by Secretary of State Knox were duly attested, authenticated, enrolled resolutions. Fully attested, authenticated, enrolled resolutions have been deemed by this Court in *Field v. Clark*, *supra*, to be unimpeachable, conclusive proof as to what each State actually ratified. Secretary of State Knox, therefore, in exercising his administrative duty, had no legal authority to disregard the "official notices" and rely instead on false presumptions regarding the intent of the States' Legislatures.

The lower courts (*see* n.13, *supra*) claiming *Field*, *supra*; *Leser v. Garnett*, 258 U.S. 130 (1922); and *Coleman v. Miller*, 307 U.S. 433 (1939) preclude them from reviewing the Secretary's administrative acts, have ruled there is a conclusive presumption the Sixteenth Amendment was ratified, and that such conclusive presumption is "nonjudiciable" and "beyond review." None of those cases before the lower courts raised the issue of the States' intentional alteration of the language proposed by Congress, and all of the lower courts have ignored the decisions of this Court in *Marbury*, *supra*; *United States v. Balin*, 144 U.S. 1 (1892); and *Pollock*, 157 U.S. at 574.

The holding in *Field* was that when a duly-enrolled bill, signed by the speaker of the house of representatives, the president of the senate, and the president of the United States, is placed in the custody

of a secretary of state, its authentication as a law of the United States is complete, and no reference can be had to the journal of either house, to the reports of committees, or to any other documents printed by authority of congress, **"for the purpose of showing that a section of the bill, as it finally passed, does not appear in the act as thus authenticated.**" (Emphasis added). *Field*, 143 U.S. at 672-73. That is not the issue presented by the Hirmers; the issue presented here is that the authenticated resolutions were ignored under the pretext that the States' Legislatures did not intend to do what the authenticated resolutions "conclusively" show they did.

The *Leser* case, involving the Nineteenth Amendment, cited to *Field* with respect to the contention that "[t]he ratifying resolutions of Tennessee and of West Virginia are inoperative, because adopted in violation of the rules of legislative procedure prevailing in the respective states." *Leser*, 258 U.S. at 137. This Court held that since the States have the power to ratify, their having done so cannot be challenged. That is not the issue here. No allegation is made that any Legislature violated their rules of legislative procedure.

In *Coleman*, what was decided to be a "political question," and therefore non-justiciable, was whether, when the legislature of the State has actually ratified the proposed amendment, the Court should restrain the state officers from certifying the ratification to the Secretary of State, because of an earlier rejection. *Coleman*, 307 U.S. at 437. That is also not an issued presented by the Hirmers.

Neither *Field*, *Coleman* nor *Leser:* 1) addresses whether a State has failed to constitutionally ratify a proposed amendment when they intentionally alter the language of the amendment proposed by Congress; 2) address whether a Secretary of State can ignore a duly authenticated, enrolled resolution; 3) address whether an unconstitutional, ministerial act of an Executive Department official somehow obtains the status of an enrolled bill that cannot be reviewed;[14] 4) or overturns *Marbury*, *supra*, which holds the federal judiciary is required to review ministerial acts of a Cabinet official when it is shown the official's acts violate the Constitution.

In *United States v. Ballin*, 144 U.S. 1 (1892), decided the same day as *Field*, this Court consulted the legislative journal of the House of Representatives to determine if the act of May 9, 1890, was legally passed by a sufficient number of votes, despite the fact that the enrolled bill was found in the Office of the Secretary of State, authenticated and approved in the customary and legal form. The *Ballin* decision establishes the lower courts improperly applied *Field*, *Leser* and *Coleman* when the contention is that the Sixteenth Amendment was not ratified by a sufficient number of States.

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[14] None of the safeguards announced by the Court in *Field* pertaining to a duly attested, enrolled bill, are present in a declaration signed by a single Cabinet official. As has been shown, Knox's declaration of ratification was in violation of U.S. CONST. art V. To afford the false declaration of one man enrolled bill status is to make a mockery of the Constitution and the holding of *Field*.

The reliance on *Field*, *Leser* and *Coleman* also violates the *stare decisis* doctrine:

> The doctrine of *stare decisis* is applicable only for cases directly on point with issues raised herein. Doubtless the doctrine of *stare decisis* is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue.
>
> The language of Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat 264, 399, may profitably again be quoted: 'It is maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not control the judgment in a subsequent suit when the very point is presented for decision. The reason of the maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.'

Pollock, 157 U.S. at 574.

The doctrine of *stare decisis* does not, therefore, apply to the issues of first impression raised by the Hirmers.

The correct principle of law regarding the issues raised by Benson and the Hirmers is set forth in *Graham v. Jones*, 198 La. 507, 3 So.2d 761 (1941). In

Graham, a proposed amendment to the Louisiana Constitution was declared ratified by the Louisiana Secretary of State even though ratified in a manner contrary to constitutional requirements. In holding the proposed amendment was not constitutionally ratified, the Court stated:

> The question of the validity of the adoption of an amendment to the constitution is a judicial and not a political question.

Graham, 198 La. at 526; 3 So.2d. at 767.

> When the mandatory provisions of the Constitution are violated, the Constitution itself strikes with nullity the act that did violence to its provisions. The Justices of the Supreme Court simply perform their sworn duty to uphold the Constitution by declaring that the offensive act transcends the fundamental law and, therefore, is ineffective. If other officials of the State government intentionally or unintentionally fail to comply with the mandatory provisions of the Constitution–which clearly and explicitly set forth the manner in which that fundamental law shall be amended–it is the absolute right of any citizen and taxpayer to challenge the constitutionality of a proposed amendment and it is the obvious sworn duty of the members of the Supreme Court to declare that the Constitution has been violated and, therefore, the attempt to so amend it was ineffective . . . . It is the sacred responsibility and duty of the Court of last resort to protect the constitutional rights of the minority against invasion or destruction by the

> vote of a majority. Otherwise, this would become a government of men and not of law. This cardinal principle is one of the basic pillars of sound, just and stable government by both the Sovereign States and the Sovereign Union. The electors themselves had no thought of destroying a constitutional form of government when they voted for the proposed amendment but to give constitutional effect to the proposed amendment with the sanction of the Court would unquestionably lead to the destruction of the Constitution because the amendment was not predicated and founded upon the observance of the Constitution's mandatory provisions but was based upon their violation.

Graham, 198 La. at 609-10; 3 So.2d. at 795.

A fundamental requirement of U.S. CONST. art V is that of concurrence; all ratifying States must concur with Congress in any amendment; no State may intentionally alter the language proposed by Congress. Here, conclusive evidence exists that the proposed Sixteenth Amendment failed to be ratified because ten States violated U.S. CONST. art. V, and failed to concur with Congress. Hence, this Court has the mandatory duty to enforce U.S. CONST. art. V.

The Lower Courts' Refusal to Exercise Their Duty to Adjudicate Whether U.S. CONST. amend. XVI Was Ratified Violates Fundamental Due Process Rights.

No one questions that if the Sixteenth Amendment was not ratified, the income tax is unconstitutional. *Pollock*, 158 U.S.; *see also Brushaber v. Union Pacific*

Railroad Co., 240 U.S. 1, 17-18 (1916)(". . . but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment . . . ."); *Eisner v. Macomber*, 252 U.S. 189, 206 (1920)("As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income.").

Count 3 of the indictment charges the Hirmers with wilful evasion of the payment of the federal income tax. An essential element of the offense is that a substantial tax is due and owing. If the federal income tax is unconstitutional because the Sixteenth Amendment was not ratified, no tax is due and owing:

> The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law but is wholly void and ineffective for any purpose. Since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed and never existed; that is, it is void *ab initio*. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.
>
> Since an unconstitutional law is void, it follows that generally the statute imposes no duties, confers no rights, creates no office or liabilities, bestows no power or authority on anyone, affords no protection, is incapable of

> creating any rights or obligations, does not allow for the granting of any relief, and justifies no acts performed under it. [Footnotes omitted.]

16A AM. JUR. 2D *Constitutional Law* § 195 (2009).

This Court has commanded the federal judiciary must exercise its duty to determine whether a law is repugnant to the Constitution:

> It is emphatically the province and duty of the judicial department to say what the law is . . . . If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply . . . . In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

Marbury, 5 U.S. at 176-79.

The District Courts and Courts of Appeal, both here and in the *Benson* case, shirked their obligation to look into whether the federal income tax is unconstitutional because the Sixteenth Amendment was not ratified in accordance with the provisions of U.S. CONST. art V. All the lower courts, when called upon to perform their mandatory obligation, have instead relied upon a conclusive presumption of ratification of the Sixteenth Amendment.

This Court has repeatedly held an element of a criminal statute cannot be supplied by a conclusive presumption; the use of such presumptions violates

due process of law. *Sandstrom v. Montana*, 442 U.S. 510, 521-523 (1979); *Stanley v. Illinois*, 405 U.S. 645, 654-657 (1972); *Heiner v. Donnan*, 285 U.S. 312, 325-29 (1932); and *Vlandis v. Kline*, 412 U.S. 441 (1973).

Not only have the District Court and the Eleventh Circuit refused to prevent the Hirmers' illegal prosecution on the basis of a conclusive presumption, but they have refused to address the Hirmers' arguments at all. The failure of a court to give due consideration to a litigant's arguments denies the litigant due process and is an abuse of discretion. *See, Clisby v. Jones*, 960 F.2d 925, 935-936 (11th Cir. 1992)("We are disturbed by the growing number of cases in which we are forced to remand for consideration of issues the district court chose not to resolve."); *Grimes v. Yoos*, 298 Fed.Appx. 916, 921 (11th Cir. 2008); *Washington v. Texas*, 388 U.S. 14, 19 (1967); *Matter of Boomgarden*, 780 F.2d 657, 661 (7th Cir. 1985)(both parties to a law suit "have a constitutional right to be heard on their claims, and 'the denial of that right to them [is] the denial of due process which is never harmless error.' *Republic National Bank v. Crippen*, 224 F.2d 565, 566 (5th Cir. 1955)(*quoting Interstate Commerce Commission v. Louisville & Nashville Railroad Company*, 227 U.S. 88, 91, 33 S.Ct. 185, 186 (1913).").

> We cannot have much confidence in the judge's considered attention to the factors in this case, when he passed over in silence the principal argument made by the defendant . . . A judge who fails to mention a ground of recognized

> legal merit (provided it has a factual basis)[15] is likely to have committed an error or oversight.

United States v. Cunningham, 429 F.3d 673, 679 (7th Cir. 2005).

> The procedure that the IJ employed in this case is an affront to Ms. Sosnovskaia's right to be heard. Regardless of the strength of her case on the merits, fundamental tenets of proper administrative procedure demand that before Ms. Sosnovskaia be deported, she should be granted a fair hearing in which the judge gives due consideration to her arguments.

Sosnovskaia v. Gonzales, 421 F.3d 589, 594 (7th Cir. 2005).

Here, the District Court did not address the six issues of first impression raised by the Hirmers; the District Court's order passes over them in silence:

> Moreover, because the district court failed to consider Sang Woo Kim's arguments before entering the default judgment, **we cannot say that the court exercised its discretion at all**. Before we can review a discretionary ruling, **we first must conclude that the court exercised its discretion in the first place by considering arguments relevant to its**

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[15] The legal basis here is the duly attested, certified public records of which a district court must take judicial upon the filing of a request to do so. FED. R. EVID. 201(d). The Hirmers made a proper request. *See* Doc. 303; App. B, pp. 136a-141a.

> **decision**, *see United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir.2005), and we will find an abuse of discretion when the district court fails to do so, *see United States v. Roberson*, 474 F.3d 432, 436 (7th Cir.2007). (Emphasis added).

United States v. Sang Woo Kim, 242 Fed.Appx. 355, 358 (7th Cir. 2007).

Criminal defendants have an inalienable right not to be convicted for violating a statute that is unconstitutional. The Fifth Amendment imposes upon the District Courts the absolute duty to address, on the merits, whether the statute under which the Hirmers are being criminally prosecuted is constitutional.

"It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury*, 5 U.S. at 147; *see Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999), and *Jones v. Bolles*, 76 U.S. 364, 369 (1869).

Both the district court, in refusing to address the merits of the Hirmers' factually based six arguments of first impression, and the Eleventh Circuit, in refusing to issue its mandamus compelling the District Court to exercise its mandatory obligation, have denied the Hirmers' a remedy. Only the issuance of this Court's writ of certiorari will afford the Hirmers the due process to which they are entitled.

Criminal Prosecution of the Hirmers Is Precluded by the First Amendment.

The supervisory power of this Court is required to stop all DOJ prosecutions, civil and criminal, for conduct and speech protected by the First Amendment with respect to the entire field of federal taxation. In *De Jonge v. State of Oregon*, 299 U.S. 353 (1937), De Jonge was charged with criminal syndicalism for doing no more than assisting in conducting a public and orderly meeting of the Communist Party at which nothing unlawful was done or advocated. *De Jonge, id.* at 357. In the course of its opinion overturning his conviction, this Court stated:

> Thus, **if the Communist Party had called a public meeting** in Portland **to discuss** the tariff, or the foreign policy of the government, or **taxation**, or relief, or candidacies for the offices of President, members of Congress, Governor, or state legislators, every speaker who assisted in the conduct of the meeting would be equally guilty with the defendant in this case, upon the charge as here defined and sustained. The list of illustrations might be indefinitely extended to every variety of meetings under the auspices of the Communist Party although held for the discussion of political issues or to adopt protests and pass resolutions of an entirely innocent and proper character.

De Jonge, 299 U.S. at 363. (Emphasis added).

So too, if the goal of the National Tax Defier Initiative (*supra* at p. 6) "to investigate, pursue and, where appropriate, prosecute those who take concrete

action to . . . deny the fundamental validity of the tax laws" is allowed to stand, then the members of any group, PQI or otherwise, that puts on a conference to peacefully discuss federal taxation become criminals. Such result has been directly condemned by this Court which recognizes that: 1) "Freedom of speech and of the press are fundamental rights which are safeguarded by due process"; 2) "the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental"; and 3) "the very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *De Jonge*, 299 U.S. at 364.

In *Benson*, now pending before this Court, the lower courts have allowed the use of I.R.C. § 6700 to censor and tax his political speech regarding federal taxation. Here the lower courts are allowing the use of 18 U.S.C. § 371 to censor and criminally punish the Hirmers' political speech regarding federal taxation.

The Hirmers are charged in Count 1 of the indictment with both a conspiracy to defraud the IRS and to commit wire fraud. There is, however, no overt act alleged against the Hirmers or any of the other alleged co-conspirators that anyone engaged in any conduct that directly involved the direct interference with the performance of the functions of the I.R.S. *Hammerschmidt v. United States*, 265 U.S. 182 (1924), specifically held that an indictment charging that defendants conspired to impair, obstruct, and defeat a lawful function of the government, by attempting through printing, publishing, and circulation of handbills, etc., to induce persons subject to registry under the Selective Service Act May 18, 1917, 50

U.S.C.A. *foll.* § 226, to refuse to register, did not charge the offense of conspiracy to defraud the United States. So too the conduct of the Hirmers: 1) promoting theories; 2) presenting to its members lectures and materials; 3) advocating; 4) expressing ideas or notions; and 5) assisting in conducting peaceful and orderly, off-shore meetings, where nothing unlawful was done or advocated" does not charge either a conspiracy to defraud or a conspiracy to commit wire fraud.

Evidence of the vindictiveness of this prosecution is apparent from the face of the "National Tax Defier Initiative." The intent of the DOJ is to squelch debate on the entire range of the subject of the validity of the Sixteenth Amendment. The DOJ is wholly unable to refute the proof that several States intentionally altered the language of the proposed Sixteenth Amendment, which alterations violate U.S. CONST. art. V. Unable to refute the proof, the DOJ first obtained an injunction to put the Hirmers and PQI out of business, *see United States v. Pinnacle Quest Int'l*, Case No. 3:08-cv-00136 (N.D. Fla. Pensacola Div. Filed Apr. 7, 2008), *affd.* 309 Fed.Appx. 333 (11th Cir. 2009), and then seized the Hirmers' assets in this case using criminal forfeiture, thereby denying the Hirmers funds to defend themselves.

In *United States v. PHE, Inc.*, 965 F.2d 848, 860 (10th Cir. 1992), the Tenth Circuit found a concerted effort on the part of the DOJ to impose financial burden on defendants, in addition to seeking a "pretextual prosecution" in violation of the First Amendment, constituted an adequate showing of vindictiveness to require the government to prove otherwise.

The First Amendment requires dismissal of a prosecution brought for the purpose of discouraging the lawful exercise of First Amendment rights. Even if the conduct charged in an indictment could be found unlawful, the government cannot use the leverage of a criminal prosecution, even a prosecution that would otherwise be permissible, for the impermissible purpose of discouraging the lawful exercise of First Amendment rights. Whenever there is evidence, as here, that an impermissible desire to chill the exercise of First Amendment rights is a motivating factor in a criminal prosecution brought by the government, the government bears the burden of proving that it would have taken the same action even without the influence of the impermissible motive. This "but for" test requires a factual determination whether, in fact, the impermissible motive is a "but-for" cause of the prosecution. The "National Tax Defier Initiative" leaves little doubt regarding the purpose of the instant prosecution, yet the District Court and the Eleventh Circuit have refused to require the DOJ to meet the mandated factual determination.

Joining organizations that participate in public debate, such as PQI, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection. *See, e.g., Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 294-96 (1981); *Buckley v. Valeo*, 424 U.S. 1, 14-25 (1976); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 466 (1958). It necessarily follows that conducting those meetings also enjoy substantial First Amendment protection.

Here, the United States' "National Tax Defier Initiative" and Count 1 of the indictment constitute a

scheme of federal censorship, especially seeking to squelch all public debate as to whether the nation's tax laws are constitutional. The indictment clearly attempts to criminalize the belief and speech that the Sixteenth Amendment was not ratified: "PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified. . . ." *(See supra*, p. 4).

This Court holds that injunctive relief or dismissal of an indictment is warranted where the prosecution is clearly motivated by the improper purpose of interfering with a defendant's constitutionally protected, First Amendment rights. *Bantam-Books v. Sullivan*, 372 U.S. 58, 67 (1963); *Dombrowski v. Pfister*, 380 U.S. 479, 490 (1965). The legal standard applicable for the "bad faith" claim under the *Bantam-Dombrowski* test focuses solely on the motivation of the government. The "National Tax Defier Initiative" makes such motivation clear. Where, as here, the claim is that this prosecution was brought to suppress the constitutionally protected First Amendment right to engage in political speech, the indictment must be dismissed. *See Mt. Healthy City School Dist. v. Doyle*, 429 U.S. 274 (1977).

CONCLUSION

There are no questions more important to the American people than whether the Constitution has been legally amended and whether the government is committing theft by forcefully collecting an unconstitutional federal income tax. *Citizens' Savings & Loan Ass'n v. City of Topeka*, 87 U.S. 655, 664

(1879)("It is none the less robbery, because it is done under the forms of law, and is called taxation.").

Nathan J. Hochman's, "National Tax Defier Initiative" is a pernicious attack on the First Amendment. It is designed to squelch debate and to censor and punish, both civilly and criminally, the rights of the American people to peacefully assemble and discuss political issues of taxation.

> The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. **As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."** *Police Department of Chicago v. Mosley*, *supra*, at 95, 92 S.Ct., at 2290; *see Cox v. Louisiana*, 379 U.S. 536, 580-581, 85 S.Ct. 466, 469-470, 13 L.Ed.2d 487 (1965) (opinion of Black, J.) . . . **If the marketplace of ideas is to remain free and open, governments must not be allowed to choose "which issues are worth discussing or debating . . . ."** 408 U.S., at 96, 92 S.Ct., at 2290. *See also Erznoznik v. City of Jacksonville*, *supra*, 422 U.S., at 214-215, 95 S.Ct., at 2275; *Tinker v. Des Moines School District*, 393 U.S. 503, 510-511, 89 S.Ct. 733, 738-739, 21 L.Ed.2d 731 (1969). To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.

Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530, 534-38 (1980).

The lower courts are violating fundamental rights to due process in refusing to address the issue that the Sixteenth Amendment was not ratified. Allowing people to be prosecuted for exercising First Amendment rights and eliminating the Fifth Amendment right to be heard in court are serious questions of national importance that must be addressed by this Court.

For all the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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APPENDIX

APPENDIX A

No. 09-15041-F

[Filed November 6, 2009]

IN RE:	)
	)
CLAUDIA HIRMER,	)
MARK STEVEN HIRMER,	)
	)
Petitioners.	)
	)

On Petition for Writ of Mandamus to United States District Court for the Northern District of Florida

---

BEFORE: TJOFLAT and WILSON, Circuit Judges.

BY THE COURT:

The petition for writs of mandamus and prohibit is DENIED.

APPENDIX B

[Filed October 5, 2009]

No.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

In re CLAUDIA CONSTANCE HIRMER
and MARK STEVEN HIRMER,

Petitioners.

District Court
For the Northern District of Florida, Pensacola
Division Case No. 3:08-cr-79
The Honorable M. Casey Rodgers

PETITION FOR WRITS OF MANDAMUS
AND PROHIBITION

Jeffrey A. Dickstein
Attorney for Petitioners
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DISCLOSURE STATEMENT

PETITIONERS' CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

1. The trial judge is M. Casey Rodgers.

2. The names of all parties are:

   Claudia Constance Hirmer, Mark Steven Hirmer, Eugene Joseph Casternovia, Robert Leighton Pendell, Mark Barry Lyon, Ellen Meredith Stubenhaus, Joseph William McPhillips, Arnold Ray Manansala, Dover Eugene Perry, Michael Guy Leonard, Mark Daniel Leitner, Arthur Ramirez Merino, and Jeffrey Jean Jenks.

3. The names of the attorneys are:

   Thomas F. Kirwin (United States Attorney), Spiro T. Kypreos, Stephen Eric Sutherland, Donald M. Sheehan, Sharon Wilson, Michelle Lynn Hendrix (Vernis & Bowling of Northwest Florida, P.A), Elizabeth Ann Amond, Tiffany Hope Eggers (AUSA), John Craig Beroset, Randall Lockhart (Federal Public Defender), Jeffrey A. Dickstein, Adam F. Hulbig (DOJ-Tax Division), Michael John Watling (DOJ-Tax Division), William Gregory Hughes.

4. Corporations mentioned in the indictment are:

   Pinnacle Quest International, Inc., a Panamanian Corporation, and Synergy Productions International, Inc., a Panamanian Corporation.

One hundred percent of the stock of Pinnacle Quest International, Inc. and Synergy Productions International, Inc. is held by Hope International Foundation, a Panamanian private interest foundation.

5. There are no publically traded corporate parties, and no stock of any corporate party is owned by any publically traded corporations.

6. MCD Productions is a d/b/a of Mark Steven Hirmer

7. Victims, if any, are the federal government.

_____

Jeffrey A. Dickstein
Attorney for Petitioners

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PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

Relief Sought

Petitioners Claudia Constance Hirmer and Mark Steven Hirmer (hereinafter "Hirmers"), pursuant to the provisions of 28 U.S.C. § 1651 and FED. R. APP. P. 21(a), hereby: 1) petition for a writ of mandamus directing the Honorable M. Casey Rodgers, Judge of the United States District Court for the Northern District of Florida, Pensacola Division, to exercise its jurisdiction and duty to consider and rule, on the merits, the factual and legal arguments of the Hirmers' that the Sixteenth Amendment was not ratified in accordance with the requirements of Article V of the Constitution; and 2) petition for a writ of prohibition to enjoin the Department of Justice, Tax Division, from continuing with its vindictive prosecution of the Hirmers in violation of U.S. Const. amend. I.

Issue Presented

1. Whether mandamus should issue to the District Court to compel the exercise of its jurisdiction and duty to hear and consider, on the merits, the factual and legal arguments made in the Himers' Motion to Dismiss Counts 1 and 3 of the indictment, that the statute they are charged with violating is unconstitutional.

2. Whether the existence of the "National Tax Defier Initiative" of Nathan J. Hochman, the Assistant Attorney General of the Justice Department's Tax Division, sufficiently establishes that the prosecution

here was motivated by a desire to discourage expression protected by the First Amendment such that the prosecution must be enjoined or dismissed.

Statement of the Facts

1. A criminal indictment was filed against the Hirmers and eleven other defendants on August 21, 2008. (Indictment, Doc. 3). Count 1 charged all defendants with conspiracy to defraud the IRS and to commit wire fraud, and Count 3 charged the Hirmers with evasion of the payment of federal income tax.

2. The indictment alleges:

> PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified and that no law required United States citizens to pay income taxes.
>
> Indictment (Doc. 3), p. 3, ¶ 6.
>
> After the demise of Global, Claudia Hirmer, Mark Hirmer and others created PQI in order to continue to promote anti-government views...
>
> Indictment (Doc. 3), p. 7, ¶ 1.
>
> On or about October 15, 2003, Mark Hirmer sent an email to a potential PQI member

> promoting PQI's Q1 and Q2 products[1] and speakers who ADVOCATE anti-government and anti-tax agendas.
>
> Indictment (Doc. 3), p. 13, ¶ 24 (emphasis added).
>
> On or before April 14, 2004, Claudia Hirmer made a recorded telephone call for the benefit of PQI members, during which Claudia Hirmer encouraged members to buy two products sold by PQI Vendors, both of which promoted tax evasion by ESPOUSING THE IDEA that the IRS did not have the legal authority to tax income.
>
> Indictment (Doc. 3), p. 15, ¶ 30 (emphasis added).

In addition, there are numerous allegations that Claudia Hirmer, and sometimes Mark Hirmer, conducted conferences. See Indictment (Doc. 3), pp. 9-23, ¶¶ 12, 18, 25, 33, 35, 41, 52, 56, 58, 60, 64 and 65.

The United States also admitted that one of the reasons to seek imprisonment prior to conviction was the fact that "[t]he defendant appeared to hold anti-government views as promoted by the PQI group as a whole." (Doc. 245, p. 2.)

---

[1] The United States will not deny PQI's Q1 is a set of audio CDs and the Q2 and Q3 products are tickets to attend an off-shore seminar where PQI "members" sit in an audience and listen to speeches.

3. The Hirmers timely filed a Motion to Dismiss Counts 1 and 3 of the Indictment (Sixteenth Amendment not Ratified) (Doc. 305, copy attached at App. p. 6), a Memorandum of Points and Authorities in support of their motion to dismiss (Doc. 306, copy attached at App. p. 48), and a Request for Judicial Notice of Public Records (Doc. 303, copy attached at App. p. 69).

4. The Hirmers' Motion to Dismiss argued Counts 1 and 3 of the indictment must be dismissed on the grounds that the provisions of the Internal Revenue Code pertaining to the federal income tax are unconstitutional, as imposing a direct tax that is not apportioned as required by U.S. CONST. art. I, § 2, cl. 3 and art. I, § 9, cl. 4, in that U.S. CONST. amend. XVI was not in law, or fact, ratified by three-fourths of the forty-eight States as required by U.S. CONST. art. V, and raised the following legal issues:

> a. When several State legislatures intentionally amended the language of the proposed Sixteenth Amendment as proposed by Congress, and voted to pass their amendment rather than ratify the amendment proposed by Congress, such action violated U.S. CONST. art. V. **This is an issue of first impression which has never been addressed by any district court, court of appeals, or the Supreme Court.**
>
> b. Application of previous case law regarding the Sixteenth Amendment, none of which had addressed the issue of the several States' intentional amendment of the

language proposed by Congress, violates the "*stare decisis* doctrine," and its application here would deny the Hirmers due process of law.

c. The administrative act of Secretary of Sate Philander Knox in declaring the Sixteenth Amendment was ratified violated U.S. CONST. art. V. **This is an issue of first impression which has never been addressed by any district court, court of appeals, or the Supreme Court.**

d. Neither the "political question doctrine" nor the "enrolled bill rule doctrine" deprives the federal judiciary of jurisdiction to review the administrative acts of Secretary of State Knox to determine whether such acts conform to the requirement of Revised Statute 205, which statute imposed the administrative acts, or whether such acts conform to the Constitution of the United States. **This is an issue of first impression which has never been addressed by any district court, court of appeals, or the Supreme Court.**

e. The misapplication of the "political question doctrine" and the "enrolled bill doctrine" to create a conclusive presumption of guilt violates the due process clause of U.S. CONST. amend. V. **This is an issue of first impression which has never been addressed by any district court, court of appeals, or the Supreme Court.**

> f. Revised Statute 205, to the extent it allows the Constitution to be amended by false presumption, violates U.S. CONST. art. V, and is unconstitutional. **This is an issue of first impression which has never been addressed by any district court, court of appeals, or the Supreme Court.**

5. The United States filed its Response (Doc. 387) which did no more than cite to the previous case law mentioned by the Hirmers, none of which case law addressed the six issues raised by the Hirmers.

6. The Hirmers filed a reply (Doc. 392) which pointed out the United States had failed to include in its Response any opposition to the merits of the Hirmers' Motion to Dismiss, including the issues of first impression raised by the Hirmers.

7. The Hirmers also filed a Motion and Memorandum in Support of Dismissing Them from Count I (First Amendment) on the grounds their prosecution was barred by the First Amendment. (Doc. 333, copy attached at App. p. 73).

8. On July 14, 2009, the District Court issued its order denying the Hirmers' motions. The District Court's order did not address any of the six issues raised by the Hirmers in their motion to dismiss (Sixteenth Amendment Not Ratified). (*See* Doc. 491, copy attached at App. pp. 1-5).

9. On July 29, 2009, the Hirmers filed a Motion for Reconsideration (Doc. 499) addressing three pre-trial motions, one of which pertained to the Hirmers' Motion to Dismiss (Sixteenth Amendment Not

Ratified). The Hirmers argued the District Court's use of previously decided case law that failed to address the merits of the factual and legal issues raised by them constituted a failure to exercise its jurisdiction, its duty, and its discretion in addressing the Hirmers' issues, which failures violated the Hirmers' fundamental right to due process of law.

10. On August 25, 2009, the District Court entered its Order (Doc. 540) denying the Hirmers' Motion for Reconsideration. The Court's Order did not address the Hirmer's Motion to Dismiss Counts 1 and 3 (Sixteenth Amendment Not Ratified).

11. The District Court has never ruled on the Hirmers' Request for Judicial Notice of the certified public records that conclusively proves the fact that several States intentionally amended the language of the Sixteenth Amendment as proposed by Congress.

Reasons the Writ of Mandamus Should Issue

The failure of a court to give due consideration to a litigant's arguments denies the litigant due process and is an abuse of discretion. *See, Clisby v. Jones*, 960 F.2d 925, 935-936 (11th Cir. 1992)("We are disturbed by the growing number of cases in which we are forced to remand for consideration of issues the district court chose not to resolve."); *Grimes v. Yoos*, 298 Fed.Appx. 916, 921 (11th Cir. 2008); *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923 (1967); *Matter of Boomgarden*, 780 F.2d 657, 661 (7th Cir. 1985)([both parties to a law suit] "have a constitutional right to be heard on their claims, and the denial of that right to them [is] the denial of due process which is never harmless error." *Republic National Bank v. Crippen*,

224 F.2d 565, 566 (5th Cir. 1955)(*quoting Interstate Commerce Commission v. Louisville & Nashville Railroad Company*, 227 U.S. 88, 91, 33 S.Ct. 185, 186 (1913)).

> We cannot have much confidence in the judge's considered attention to the factors in this case, when he passed over in silence the principal argument made by the defendant . . . A judge who fails to mention a ground of recognized legal merit (provided it has a factual basis) is likely to have committed an error or oversight.

United States v. Cunningham, 429 F.3d 673, 679 (7th Cir. 2005).

> The procedure that the IJ employed in this case is an affront to Ms. Sosnovskaia's right to be heard. Regardless of the strength of her case on the merits, fundamental tenets of proper administrative procedure demand that before Ms. Sosnovskaia be deported, she should be granted a fair hearing in which the judge gives due consideration to her arguments.

Sosnovskaia v. Gonzales, 421 F.3d 589, 594 (7th Cir. 2005).

Here, the District Court chose not to resolve the six issues raised by the Hirmers. The District Court's order passes over them in silence:

> Moreover, because the district court failed to consider Sang Woo Kim's arguments before entering the default judgment, **we cannot say that the court exercised its discretion at**

> **all**. Before we can review a discretionary ruling, **we first must conclude that the court exercised its discretion in the first place by considering arguments relevant to its decision**, *see United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir.2005), and we will find an abuse of discretion when the district court fails to do so, *see United States v. Roberson*, 474 F.3d 432, 436 (7th Cir.2007). [Emphasis added.]

United States v. Sang Woo Kim, 242 Fed.Appx. 355, 358 (7th Cir. 2007).

The District Court relied on case law that does not address the first impression arguments of the Hirmers, nor did the District Court address the issue that such case law, contending the federal judiciary is without jurisdiction to determine whether a constitutional amendment was ratified in accordance with the requirements of U.S. CONST. art. V, was wrongly decided.

Criminal defendants have an inalienable right not to be convicted for violating a statute that is unconstitutional. The Fifth Amendment imposes upon the District Court the absolute duty to address, on the merits, whether the statute under which the Hirmers are being tried is constitutional. The federal judiciary has the duty to review not only statutes that may violate the Constitution, but the administrative acts of a Secretary of State. U.S. CONST. art. III, § 2; *Marbury v. Madison*, 5 U.S. 137 (1803). Neither the "political question doctrine" nor the "enrolled bill rule doctrine" as announced in *Field v. Clark*, 143 U.S. 649, 12 S.Ct. 495 (1892); *Leser v. Garnett*, 258 U.S. 130, 42 S.Ct. 217

(1922); and *Coleman v. Miller*, 307 U.S. 433, 59 S.Ct. 972 (1939) are contrary.

The Supreme Court has repeatedly told the federal judiciary it may not rely on a conclusive presumption to find against a defendant on an essential element of a cause of action. *See Sandstrom v. Montana*, 442 U.S. 510, 521-523, 99 S.Ct. 2450, 2458-2459 (1979); *Stanley v. Illinois*, 405 U.S. 645, 654-657, 92 S.Ct. 1208, 1214-1216 (1972); *Heiner v. Donnan*, 285 U.S. 312, 325-29, 52 S.Ct. 358, 360-362 (1932); *Schlesinger v. State of Wisconsin*, 270 U.S. 230, 46 S.Ct. 260 (1926); *Tot v. United States*, 319 U.S. 463, 468-69, 63 S.Ct. 1241, 1245-1246 (1943); *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 2233 (1973); *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19, 119 S.Ct. 1961, 1977 (1999), and *Jones v. Bolles*, 76 U.S. 364, 368 (1869).

Mandamus is the appropriate device to order a court to exercise its jurisdiction, duty and discretion, especially when the failure to exercise its discretion results in the denial of a fundamental right guaranteed by the Constitution. *Ex parte Bradstreet*, 33 U.S. 588, 590 (1834)("We have only to say, that a judge must exercise his discretion in those intermediate proceedings which take place between the institution and trial of a suit"); *Commissioner of Patents v. Whiteley*, 71 U.S. 522, 534 (1866)("It lies, also, where the exercise of judgment and discretion are involved and the officer refuses to decide"); *Miguel v. McCarl*, 291 U.S. 442, 451, 54 S.Ct. 465, 466 (1934)("[i]t also is employed to compel action, when refused, in matters involving judgment and discretion"); *In re United States*, 397 F.3d 274, 282 (5th Cir. 2005)(Mandamus is appropriate "when the trial

court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court"); *Cotton v. Jackson*, 216 F.3d 1328, 1333 (11th Cir. 2000)(mandamus is the remedy to ensure one is not deprived of his due process rights); *see also A.A.A. Always Open Bail Bonds, Inc. v. DeKalb County, Georgia*, 129 Fed.Appx. 522, 525-26 (11th Cir. 2005); *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 832 (9th Cir. 2002); *In re Roldan-Zapata*, 872 F.2d 18 (2nd Cir. 1989); *General Motors Corp. v. Lord*, 488 F.2d 1096, 1099-1100 (8th Cir. 1973); *International Business Machines Corp. v. United States*, 471 F.2d 507, 516 n. 16 (2nd Cir. 1972).

No Other Adequate Remedy

The District Court has refused to exercise its jurisdiction, duty and discretion in addressing the following issues:

1. Previous case law was wrongly decided because courts misapplied the cases of *Field v. Clark*, *supra*; *Leser v. Garnett*, *supra*; and *Coleman v. Miller*, *supra*;

2. Previous case law was wrongly decided because previous courts ignored the holding of *Marbury v. Madison*, *supra* and *United States v. Balin*, 144 U.S. 1, 12 S.Ct. 507 (1892);

3. Knox's act of reviewing the legislative action of the several States and issuing a certificate, the duty imposed upon the

Secretary of State by Revised Statute 205, does not constitute an enrolled bill nor fall within the scope of judicial non-reviewable political action;

4. Revised Statute 205, wherein Congress attempts to make the administrative action of a Secretary of State conclusive upon the courts, is itself unconstitutional and violates Article V of the Constitution;

5. That the presumptions by Knox that States did not intentionally amend the language proposed by Congress was, and is, false;

6. A State that amends the language proposed by Congress, and then votes to ratify that language, has not voted to ratify the amendment proposed by Congress, and cannot be counted in the tally.

So too, the District Court has failed, to date, to issue an order on the Hirmers' request that the Court judicially notice the public records submitted, which records provide the factual support for the Hirmer's legal arguments. In failing to consider the evidence in support of the Hirmers' Motion to Dismiss Counts 1 and 3, the District Court failed to exercise any discretion at all. As noted hereinabove, the only remedy available to direct a court to exercise its jurisdiction, duty and discretion is a writ of mandamus.

The Hirmers are not here asking this Court to tell the District Court how to rule on the six issues, but merely to tell the District Court that it must exercise

its jurisdiction granted by U.S. CONST. art III; § 2, and exercise its duty (*see Marbury v. Madison, supra*) to address the merits of the issues raised by the Hirmers regarding acts alleged to be repugnant to the Constitution.

The indictment alleges at paragraph 6 on page 3 that PQI presented anti-tax theories, such as the notion that the 16th Amendment was never ratified, and at Paragraph 11 on page 4 alleges "All citizens of the United States were taxed on their worldwide income. U.S. Const. amend. XVI, United States Code, §§ 1, 61." The United States has, therefore, directly called into issue the truth or falsity, both as a question of law and matter of fact, the validity of the Sixteenth Amendment.

The District Court believes it lacks jurisdiction to adjudicate the issue, and will take this issue from the jury based on its belief that the issue is concluded against the Hirmers by irrebuttable presumption. Such conduct will violate Supreme Court precedent and deny the Hirmers the right to defend. The Hirmers have been, and will continue to be, denied due process.

Neither the judiciary nor the government suffers any prejudice in affording the Hirmers due process of law. The United States directly brought the issue of the ratification of the Sixteenth Amendment before the Court and has made it an issue. The Hirmers have the right to defend both pre-trial and during trial; no other remedy than mandamus is available to afford them that right in light of the District Court's refusal to address the issues on the merits.

Reasons the Writ of Prohibition Should Issue

The use of tax law to censor and suppress political speech regarding taxation has repeatedly been condemned by the Supreme Court of the United States. *Grosjean v. American Press Co., Inc.*, 297 U.S. 233, 244-250, 56 S.Ct. 444, 446-449 (1936). Notwithstanding the history of the causes of the American Revolution, perfectly described by the *Grosjean* Court, Nathan J. Hochman, Assistant Attorney General of the Justice Department's Tax Division has taken it upon himself to squelch debate on the entire subject of the fundamental validity of the federal income tax.[2]

> **The First Amendment's hostility to content-based regulation extends** not only to restrictions on particular viewpoints, but also **to prohibition of public discussion of an entire topic.** As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department of Chicago v. Mosley*, *supra*, at 95, 92 S.Ct., at 2290; *see Cox v. Louisiana*, 379 U.S. 536, 580-581, 85 S.Ct.

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[2] "WASHINGTON - Today Nathan J. Hochman, Assistant Attorney General of the Justice Department's Tax Division, announced the creation of the National Tax Defier Initiative or TAXDEF. The purpose of this initiative is to reaffirm and reinvigorate **the Tax Division's commitment to investigate, pursue and, where appropriate, prosecute those who** take concrete action to defy and **deny the fundamental validity of the tax laws**." See http://www.usdoj.gov/opa/pr/2008/April/08_tax_275.html (emphasis added).

> 466, 469-470, 13 L.Ed.2d 487 (1965) (opinion of Black, J.) . . . If the marketplace of ideas is to remain free and open, **governments must not be allowed to choose "which issues are worth discussing or debating . . . ."** 408 U.S., at 96, 92 S.Ct., at 2290. *See also Erznoznik v. City of Jacksonville, supra,* 422 U.S., at 214-215, 95 S.Ct., at 2275; *Tinker v. Des Moines School District,* 393 U.S. 503, 510-511, 89 S.Ct. 733, 738-739, 21 L.Ed.2d 731 (1969). **To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.** (Emphasis added).

Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530, 534-38, 100 S.Ct. 2326, 2331-2334 (1980).

The Hirmers are charged in Count 1 of the indictment with both a conspiracy to defraud the IRS and to commit wire fraud. There is, however, no overt act alleged that the Hirmers engaged in any conduct that directly involved the direct interference with the performance of the functions of this agency. *Hammerschmidt v. United States,* 265 U.S. 182, 44 S.Ct. 511 (1924), specifically held that an indictment charging that defendants conspired to impair, obstruct, and defeat a lawful function of the government, by attempting through printing, publishing, and circulation of handbills, etc., to induce persons subject to registry under the Selective Service Act May 18, 1917, 50 U.S.C.A. foll. § 226, to refuse to register, did not charge the offense of conspiracy to defraud the United States. So too the conduct of the Hirmers to induce people to hear "anti-government"

and "anti-tax" agendas does not charge either a conspiracy to defraud or a conspiracy to commit wire fraud.

Evidence of the vindictiveness of this prosecution is apparent from the face of the "Tax Defier Initiative." The intent of the DOJ is to squelch debate on the entire range of the subject of the validity of the Sixteenth Amendment. The DOJ is wholly unable to refute the proof that several States intentionally amended the language of the proposed Sixteenth Amendment, which amendments violate U.S. Const. art. V. Unable to refute the proof, the DOJ first obtained an injunction to put the Hirmers and PQI out of business, *see United States v. Pinnacle Quest Int'l*, Case No. 3:08-cv-00136 (N.D. Fla. Pensacola Div. Filed Apr. 7, 2008), *affd.* 309 Fed.Appx. 333 (11th Cir. 2009)[3], and then seized the Hirmers' assets in this case using criminal forfeiture, thereby denying the Hirmers funds to defend themselves. So too, the United States, rather than identify the documents it intended to use in its case-in-chief, provided defendants with a disk drive containing a minimum of 350 gigabytes of data (millions of pages of documents) precluding effective preparation for trial. As a result, the District Court

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[3] A Petition for Writ of Certiorari will be filed with the United States Supreme Court on October 16, 2009, in the case of *United States v. Benson*, asking the Supreme Court to declare IRC § 6700, the "abusive tax shelter" statute, unconstitutional when used to censor and punish political speech on the issue of the constitutional validity of the federal income tax. The Supreme Court is also being asked to adjudicate whether the refusal of the lower courts to hear, on the merits, the same arguments the District Court here refused to address, constitutes a denial of due process.

removed the case from the trail calendar (Doc. 551) and ordered the United States to provide an index of the discovery (Doc. 558). The case has not yet been reset for trial putting further financial burden and emotion distress on the Hirmers.

In *United States v. PHE, Inc.*, 965 F.2d 848, 860 (10th Cir. 1992), the Tenth Circuit found a concerted effort on the part of the DOJ to impose financial burden on defendants, in addition to seeking a pretextual prosecution in violation of the First Amendment, constituted an adequate showing of vindictiveness to shift the burden of proof to the government.

The First Amendment requires dismissal of a prosecution brought for the purpose of discouraging the lawful exercise of First Amendment rights. Even if the conduct charged in an indictment could be found unlawful, the government cannot use the leverage of a criminal prosecution, even a prosecution that would otherwise be permissible, for the impermissible purpose of discouraging the lawful exercise of First Amendment rights. Whenever there is evidence, as here, that an impermissible desire to chill the exercise of First Amendment rights is a motivating factor in a criminal prosecution brought by the government, the government bears the burden of proving that it would have taken the same action even without the influence of the impermissible motive. This "but for" test requires a factual determination whether, in fact, the impermissible motive is a "but-for" cause of the prosecution. The "Tax Defier Initiative" leaves little doubt regarding the purpose of the instant prosecution.

Joining organizations that participate in public debate, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection. *See, e.g., Citizens Against Rent Control / Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 294-96, 102 S.Ct. 434, 436-437 (1981); *Buckley v. Valeo*, 424 U.S. 1, 14-25, 96 S.Ct. 612, 632-637 (1976); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 466, 78 S.Ct. 1163, 1173 (1958).

In *Dombroski v. Pfister*, 380 U.S. 479, 487, 85 S.Ct. 1116, 1121 (1965), the State of Louisiana charged leaders of a local civil rights movement with operating a subversive, Communist-front organization, named the Southern Conference Educational Fund, Inc. The defendants in the state criminal action sought an injunction in federal court against prosecution of those cases, and from denial of that requested injunction, the Supreme Court granted certiorari. The Court held that when a state criminal prosecution threatens First Amendment freedoms, a federal court could intervene and issue injunctions to protect First Amendment rights: "Moreover, we have not thought that the improbability of successful prosecution makes the case different. The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure."

In *Bantam Books v. Sullivan*, 372 U.S. 58, 83 S.Ct. 631 (1963), which involved Rhode Island's obscene books banning law, the Rhode Island Commission to Encourage Morality in Youth could make recommendations about what books and other materials were considered by it to be obscene. Obeying the wishes of the Commission was a sure way to avoid

its wrath, and refusal could result in criminal prosecution. In holding that the Commission could be enjoined, the Court noted that "the freedoms of expression must be ringed about with adequate bulwarks" (*Id.* at 488), and the Commission's practice constituted a "scheme of state censorship." For this reason, the Court allowed potential criminal defendants to attack this scheme in federal court. This precedent from the Supreme Court has become the basis for subsequent decisional authorities allowing criminal defendants to assert First Amendment objections to threatened or actual criminal prosecutions.

Here, the United States' "National Tax Defier Initiative," and Count 1 of the indictment, constitutes a scheme of federal censorship, especially seeking to squelch all public debate as to whether the nation's tax laws are constitutional. The indictment clearly attempts to criminalize the belief and speech that the Sixteenth Amendment was not ratified: "PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified. . . ." (Indictment, p. 3, ¶ 6).

Via *Bantam-Books* and *Dombroski, supra*, injunctive relief or dismissal of an indictment is warranted where the prosecution is clearly motivated by the improper purpose of interfering with a defendant's constitutionally protected, First Amendment rights. *Bantam*, 372 U.S. at 67; *Dombroski*, 380 U.S. at 490. The legal standard applicable for the "bad faith" claim under the *Bantam-Dombroski* test focuses solely on the motivation of the

government. The "National Tax Defier Initiative" makes such motivation clear. Where, as here, the claim is that this prosecution was brought to suppress the constitutionally protected First Amendment right to engage in speech, the indictment must be dismissed.

In *PHE, Inc.*, 965 F.2d, a merchant of the pornography industry, Penthouse Enterprises, was indicted as the result of a DOJ project, "Project PostPorn," which was a multi-district effort to prosecute those in this industry despite the fact that much of the matters under investigation concerned materials protected by the First Amendment. PHE moved to dismiss the indictment returned against it, but the district court denied the motion. Asserting that it could appeal this collateral order, PHE pursued relief in the court of appeals, which stated:

> The overarching consideration that forms the backdrop of the district court proceedings is whether the foregoing facts activate the constitutional precept that a prosecution motivated by a desire to discourage expression protected by the First Amendment is barred and must be enjoined or dismissed, irrespective of whether the challenged action could possibly be found to be unlawful. *See Wayte v. United States*, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985) ("[T]he decision to prosecute may not be 'deliberately based upon an unjustifiable standard' . . . including the exercise of protected statutory and constitutional rights.").

Phe, Inc., 965 F.2d at 853.

The Tenth Circuit reversed the district court's order and remanded for further proceedings. *See also Council for Periodical Distributors v. Evans*, 827 F.2d 1483 (11th Cir. 1987).

A "bad faith" prosecution is one instituted for the purpose of harassment or to deter the exercise of federally protected rights. The quantum of proof of guilt is irrelevant to the question of whether a defendant has been improperly singled out for prosecution because of his or her political beliefs or for other unjustifiable reasons. *PHE, Inc.*, 965 F.2d at 853. Furthermore, there is no need to prove that others similarly situated have not been prosecuted when a "bad faith" prosecution is at issue. A prosecution to "chill" First Amendment activity or to punish a defendant for her exercise of other constitutionally protected rights is unlawful regardless of whether it is selective.

A prosecution brought for the purpose of suppressing protected rights is unconstitutional even if there is probable cause to prosecute the precise conduct covered by the indictment.[4] The fact that there may be probable cause to prosecute does not answer the question whether suppression of protected First Amendment rights is a desired goal of the prosecution, and that is the critical question for purposes of a First Amendment, bad faith inquiry. The case law requires dismissal of a bad faith indictment even if a conviction could be obtained. *See, e.g., Mt. Healthy City School Dist. v. Doyle*, 429 U.S. 274, 97 S.Ct. 568 (1977);

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[4] Such is not the case here; the indictment is barren of allegations of direct interference with the IRS.

P.H.E., Inc., supra; and *Saye v. St. Vrain Valley School Dist.*, 785 F.2d 862 (10th Cir. 1986).

Whenever there is evidence, as here, that an impermissible desire to deter lawful First Amendment activities is a motivating factor in a governmental decision, the Government bears the burden of proving that it would have taken the same action even without the influence of the impermissible motive. This "but for" test requires a factual determination whether, in fact, the impermissible motive is a but-for cause of the governmental action. *Mt. Healthy City School Dist.*, 429 U.S. and *Saye*, 785 F2d.

The Supreme Court and others have repeatedly ruled in analogous contexts that governmental actions can violate the First Amendment if the persons recommending those actions were motivated by a desire to discourage First Amendment rights, even if the persons who finally approved those recommendations were not impermissibly motivated.

> The causation issue in first amendment cases is purely factual: did retaliation for protected activity cause the termination in the sense that the termination would not have occurred in its absence? It is not necessary that the improper motive be the final link in the chain of causation: if an improper motive sets in motion the events that lead to termination that would not otherwise occur, "intermediate step[s] in the chain of causation" do not necessarily defeat the plaintiff's claim.

Professional Ass'n of College Educators v. El Paso County Comm. Coll. Dist., 730 F.2d 258, 266 (5th Cir.), *cert. denied*, 469 U.S. 881 (1984).

The crucial issue is whether the subordinate's response to "protected activity" was a "but for" cause of the indictment. The same test has been applied in other Circuits as well. In *Cox v. Dardanelle Public School District*, 790 F.2d 668 (8th Cir. 1986), the Eighth Circuit held that government action violated the First Amendment even though the final decision maker did not have an impermissible motive, because the final decision maker "would not have considered an adverse action" absent the bad faith of those who recommended that action. *Cox*, 790 F.2d at 676.

Similarly, in *Haimowitz v. University of Nevada*, 579 F.2d 526 (9th Cir. 1978), the Ninth Circuit reversed a trial court's grant of summary judgment premised on the proposition that the bad faith "was alleged to have occurred at the advisory level only." *Haimowitz*, 579 F.2d at 527. The Haimowitz trial court had believed it did not have to resolve the factual question whether the final decision maker "would have reached the same result" in the absence of subordinates' impermissible motivations. *Id.* at 530. The Ninth Circuit ruled that it was error not to have resolved that factual question:

> The district court, and now the appellees, seek to avoid these genuine disputes by arguing that any retaliation was only at the advisory level. It is thought by the appellees that the improper bias is too far removed from the final decision making to be of constitutional moment. Appellees have not cited any legal authority for

> their position. Rather, it appears that in cases where recommendations form the basis for the nonretention decision, this input is critical.

Haimowitz, 579 F.2d at 530 (*quoting Bertot v. School District No. 1*, 522 F.2d 1171, 1181 (10th Cir. 1975), and *Smith v. Losee*, 485 F.2d 334, 336-40 (10th Cir. 1973).

The courts may not permit vindictiveness to be hidden behind procedural cosmetics. The test must be pragmatic. *P.H.E., Inc., supra.*

No Other Adequate Remedy

The unique factors in this case are extremely similar to those in the *PHE, Inc.*, case: substantial evidence of an extensive government campaign, the "National Tax Defier Inititative," of which this indictment is only a part, designed to use the burden of repeated prosecutions to chill the exercise of First Amendment rights and financially ruin the Hirmers.

> We have decided that these cases form the proper analogy and must command the threshold question of appealability. The gravamen of the appellants' argument is that the actual act of going to trial under a pretextual prosecution has a chilling effect on protected expression. Accordingly, because the right asserted is a "right not to be tried", *Hollywood Motor Car*, 458 U.S. at 267, 102 S.Ct. at 3083-84, we will take jurisdiction of this appeal from the order denying the motion to dismiss the indictment; "the decision . . . involved an important right which would be

> 'lost, probably irreparably,' if review had to await final judgment." *Abney*, 431 U.S. at 658, 97 S.Ct. at 2039-40 (*quoting Cohen*, 337 U.S. at 546, 69 S.Ct. at 1225-26).

PHE, Inc., 965 F.2d at 856.

CONCLUSION

The "National Tax Defier Initiative" and allegations of the indictment quoted above leave no doubt but that the Department of Justice, Tax Division, utilizing the concerted efforts of the IRS and the Offices of the United States Attorneys, are involved in an impermissible scheme to censor, through civil injunctions and criminal prosecutions, any opposition to the federal income tax. Not only does the indictment fail to establish that the Hirmers were engaged in anything but protected First Amendment activity, it shows the prosecution against the Hirmers was motivated for daring to "espouse ideas" and "advocate" through the production and distribution of audio CDs and selling tickets where people peacefully assemble to hear speech, that the Sixteenth Amendment was not ratified, an issue the courts have declared is a "political question."

For all the reasons stated herein above, this Court should issue a Writ of Mandamus directing the District Court to address the merits of the facts and legal argument submitted in support of the Hirmers' Motion to Dismiss Counts 1 and 3 of the indictment, and a Writ of Prohibition prohibiting the trial of the Hirmers for engaging is protected, political, speech.

Respectfully submitted,

JEFFREY A. DICKSTEIN
Attorney for Petitioners

Certificate of Compliance

1. This brief complies with the page limitation of FED. R. APP. P. 21(d) 32 because it is less than thirty pages.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word Perfect Version 14, Times New Roman typeface, 14 point size font.

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Jeffrey A. Dickstein
Attorney for Petitioners

Dated: October 5, 2009.

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

Case No. 3:08cr79/MCR

UNITED STATES OF AMERICA

v.

CLAUDIA CONSTANCE HIRMER;
MARK STEVEN HIRMER; and
MICHAEL GUY LEONARD

_____/

ORDER

In a fifteen-count indictment dated August 21, 2008, the government charged defendants Claudia C. Hirmer, Mark S. Hirmer (together, "the Hirmers"), and Michael G. Leonard ("Leonard"), with Conspiracy to Commit Offense or to Defraud the United States (18 U.S.C. § 371); Laundering of Monetary Instruments (18 U.S.C. § 1956(h)); and Fraud by Wire, Radio or Television (18 U.S.C. § 1343). The indictment also charged the Hirmers with Attempt to Evade or Defeat

Tax (26 U.S.C. § 7201).[1] Trial is scheduled to begin January 4, 2010.

Both the Hirmers and Leonard have filed numerous pretrial motions on various grounds. Specifically, the Hirmers move to dismiss Count I because it fails to charge an offense, it is duplicitous, their conduct was protected by the First Amendment, and the federal income tax is unconstitutional; to dismiss Count II because it fails to charge an

* * *

[Page 5 of 12]

one of his coconspirators did. *United States v. Marti,* 294 Fed.Appx. 439, 445 (11th Cir. 2008). The indictment alleges that the defendants knowingly conspired to defraud the Internal Revenue Service, an agency of the United States, by attempting to interfere with and obstruct its lawful governmental functions through deceitful means. Notwithstanding the Hirmers' protestations to the contrary, the indictment alleges at least one overt act: the failure to properly report income. Again, the indictment need not allege that a defendant personally committed any overt acts. Here, the indictment presents the essential elements

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[1] Count I of the indictment alleges a conspiracy to commit offense against and to defraud the United States. Count II alleges conspiracy to launder money. Count III alleges tax evasion. Counts IV through XV allege wire fraud. Claudia Hirmer is charged in Counts IV through X and XIII; Mark Hirmer is charged in Counts VI, XI and XIII; and Michael Leonard is charged in Counts VI, X, XI and XIII. Ten other defendants were also charged in the indictment. The indictment also seeks forfeitures of certain properties pursuant to 18 U.S.C. § 982(a)(2).

of the charged offense and notifies the accused of the charges he/she must defend against.

Next, the Hirmers and Leonard, in separate motions, argue that the government must elect between the "defraud" and "any offense" clauses of the conspiracy statute. The government correctly argues this is not the law in the Eleventh Circuit. *See United States v. Harmas,* 974 F.2d 1262, 1266 (11th Cir. 1992). In *Harmas,* the first count of the indictment alleged that the defendant had conspired to commit offenses against and defraud the United States. *Id.* Harmas contended that the count was duplicitous. *Id.* The Eleventh Circuit rejected his argument. *Id.*

Third, the Hirmers argue the First Amendment right to free expression bars their prosecution because the government's goal is to silence their criticism of the federal income tax; according to the Hirmers, the indictment charges them with unlawfully promoting ideas, advocating views and conducting conferences. The government argues PQI's speech was deceptive and furthered the conspiracy to defraud.

The constitutional guarantee of free expression does not extend to speech used as an integral part of conduct in violation of a valid criminal statute. *New York v. Ferber,* 458 U.S. 747, 761-62 (1982). Moreover, the First Amendment does not prohibit the government's use of speech to prove motive or intent. *Wisconsin v. Mitchell,* 508 U.S. 476, 489 (1993). The First Amendment prohibits official actions, including criminal prosecutions, in retaliation for speaking out. *Hartman v. Moore,* 547 U.S. 250, 256 (2006). However, adverse official actions may be taken against a speaker on non-retaliatory grounds. *Id.* [Page 6 of 12] The

Hirmers offer little more than their own self-serving assertions to show the government had a retaliatory motive.[4]

The Hirmers' final argument in support of their motion to dismiss Count I is that the federal income tax is unconstitutional. Specifically, the Hirmers argue that the Sixteenth Amendment was not ratified, and thus is not effective against citizens of the United States. As the government notes, numerous courts have rejected this argument. *See, e.g., Pollard v. Commissioner,* 816 F.2d 603, 604 (11th Cir.1987), *Stubbs v. Commissioner,* 797 F.2d 936,938 (11th Cir. 1986), *Miller v. United States,* 868 F.2d 236, 241 (7th Cir. 1989), *In re Becraft,* 885 F.2d 547, 549 (9th Cir.

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[4] To support their claim of retaliation, the Hirmers quote a Department of Justice press release about the National Tax Defier Initiative, which states: "The purpose of this initiative is to reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue and, where appropriate, prosecute those who take concrete action to defy and deny the fundamental validity of the tax laws." Press Release, Department of Justice, Nathan J. Hochman, Tax Division's Assistant Attorney General, Announces the Creation of the National Tax Defier Initiative (Apr. 8, 2008), *available at* http://www.usdoj.gov/opa/pr/2008/April/08_tax_275.html. The press release further states that "the tax defier is not someone who is merely exercising his or her First Amendment rights to challenge the tax policy choices that Congress has made. Instead, the tax defier is someone who rejects the legal foundation of the tax system, despite decades of legal precedent upholding the system's constitutional and statutory validity, and *who takes specific and concrete action to violate the law." Id.* (emphasis added). The press release seemingly supports the government's argument that the Hirmers were prosecuted not for their words but because they took specific action to violate the law.

1989). For the foregoing reasons, the motions to dismiss Count I are denied.

Motions to Dismiss Count II

The Hirmers and Leonard, in separate motions, move to dismiss the money laundering conspiracy charge in Count II for failure to charge an offense. The Hirmers argue the indictment fails to plead any financial transaction involving proceeds of wire fraud from Counts IV through XV. The government argues the money laundering conspiracy charged in Count II involved proceeds of wire fraud alleged, but not charged, in Count I. Leonard argues the indictment fails to allege he personally knew of particular overt acts by his coconspirators. The government argues the indictment sufficiently alleges Leonard knowingly participated in the money laundering conspiracy.

To prove a conspiracy to commit money laundering, the government must show that two or more persons agreed to commit a substantive money laundering violation, and the [Page 7 of 12] defendant knowingly and voluntarily joined the conspiracy. *United States v. Martinelli, 454* F.3d 1300, 1310 (11th Cir. 2006). The substantive money laundering violation may be "intent to promote" money laundering or "concealment money laundering." *Id.* at 1309. To prove concealment money laundering, the government must establish that defendant conducted or attempted to conduct a financial transaction knowing that it involved the proceeds of a specified unlawful activity and its purpose was to conceal the nature, location, source, ownership or control of the proceeds. *See United States v. Magluta, 418* F.3d 1166, 1174 n.2 (11th Cir. 2005). Concealment money laundering requires the existence

of an underlying specified unlawful activity. *Martinelli,* 454 F.3d at 1309. Wire fraud is a specified unlawful activity. *See* 18 U.S.C. §§ 1956(c)(7)(a), 1961 (1). The government, however, need not prove the defendant committed the specified unlawful activity; the government need only prove the defendant knew the money laundered was derived from the specified unlawful activity. *Martinelli,* 454 F.3d at 1311 (upholding defendant's conviction for conspiracy to launder the proceeds of mail fraud even though defendant was not charged with mail fraud); *see also Magluta,* 418 F.3d at 1174 (upholding defendant's conviction for concealment money laundering of drug proceeds despite defendant's prior acquittal on all drug-related counts). The indictment may identify the specified unlawful activity by incorporating allegations from other counts. *See United States v. Boldren,* 325 F.3d 471, 491 (4th Cir. 2003) (holding sufficient a money laundering conspiracy charge which incorporated overt acts from a general conspiracy charge). The government is not required to allege any details about the specified unlawful activity, however. *United States v. Smith,* 44 F.3d 1259, 1265 (4th Cir. 1995).

Here, the indictment charges that defendants knowingly conspired to conduct financial transactions with funds derived from specified unlawful activity, knowing that the transactions were designed to conceal the nature, location, source, ownership and control of the proceeds of specified unlawful activity. The indictment identifies the specified unlawful activity as wire fraud. The government need not allege

any details of the wire [Page 8 of 12] fraud.[5] *See Smith*, 44 F.3d at 1265. Thus, the indictment adequately charges the defendants with conspiracy to commit concealment money laundering, as it presents the essential elements of the charged offense and notifies the accused of the charges he/she must defend against. The motions to dismiss Count II are denied.

Motion to Dismiss Count III

The Hirmers move to dismiss Count III for tax evasion, on the ground that the federal income tax is unconstitutional. For the reasons previously given, this motion is denied.

Motion to Dismiss Counts VI, X, XI and XIII

Leonard moves to dismiss the wire fraud counts against him for failure to charge an offense. Specifically, Leonard argues the indictment fails to charge him with intentionally participating in a scheme to defraud, to charge that the wire communications were reasonably calculated to further the scheme to defraud, and to give a complete definition of the scheme to defraud. The government argues the indictment is sufficient on its face. In order

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[5] Although not required to do so, the government gave defendants ample notice of the details of the underlying wire fraud by incorporating the allegations of Count I. Although Count I charges conspiracy, not wire fraud, the overt acts alleged constitute wire fraud. In Count I, the government alleges that the defendants obtained money from PQI's members, by means of false or fraudulent representations about the legality of PQI's products, and transmitted wire communications to further the scheme. *See* 18 U.S.C. § 1343.

to prove wire fraud, the government must show that a defendant intentionally participated in a scheme to defraud, and used wire communications to further that scheme. *United States* v. *Ross*, 131 F.3d 970, 984 (11th Cir. 1997). The indictment in this case alleges that Leonard knowingly transmitted wire communications on a specified date to a specified person for the purpose of executing a scheme and artifice to defraud. Thus, the indictment presents the essential elements of the charged offense and notifies the accused of the charges he must defend against. Leonard's motion to dismiss the wire fraud counts is denied.

Motions to Strike Surplusage from the Indictment

The Hirmers and Leonard move to strike as surplusage references in the indictment to David Struckman ("Struckman") and the Institute for Global Prosperity ("Global"). According to the indictment, David Struckman founded Global. Claudia Hirmer created

* * *

Doc 305

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:08-cr-79

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
Claudia Constance Hirmer, et al.,	)
	)
Defendants.	)
	)

DEFENDANTS MARK AND CLAUDIA HIRMER'S MOTION TO DISMISS COUNTS 1 AND 3 OF THE INDICTMENT (SIXTEENTH AMENDMENT NOT RATIFIED)

Come now Defendants Claudia Hirmer and Mark Hirmer (hereinafter "Hirmers"), who move the Court for an order dismissing Counts 1 and 3 of the indictment on the grounds that the provisions of the Internal Revenue Code pertaining to the federal income tax are unconstitutional as imposing a direct tax that is not apportioned as required by U.S. CONST. art. I, § 2, cl. 3 and U.S. CONST. art I, § 9, cl. 4 in that U.S. CONST. amend XVI was not in law, or fact, ratified by three-fourths of the forty-eight States as required by U.S. CONST. art V. In support of this motion, the Hirmers make the following showing:

THE INDICTMENT

1. The indictment (Doc. 3) charges the Hirmers and others, in Count 1, with a conspiracy to defraud the Internal Revenue Service and a conspiracy to commit wire fraud, and charges the Hirmers in Count 3 with evasion of the payment of federal income taxes.

2. Paragraph 6 on page 3 alleges PQI presented anti-tax theories, such as the notion that the 16th Amendment was never ratified.

3. Paragraph 11 on page 4 alleges "All citizens of the United States were taxed on their worldwide income. *U.S. Const. Amend XVI, United States Code, §§ 1, 61; Treas. Reg. § 1.1-1(b).* Thus, the tax laws of the United States, including the Internal Revenue Code (Title 26 of the United States Code), required every citizen and resident of the United States who received gross income from anywhere in the world in excess of the minimum filing amounts established by law for a particular tax year to annually make and file an income tax return for that tax year. *Title 26, United States Code, § 6011(a); Treas. Reg. § 1.6011(a).*"[1]

4. The United States has, therefore, directly called into issue the truth or falsity, both as a question of law and matter of fact, the validity of the Sixteenth Amendment.

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[1] This is false. The statute is 26 U.S.C. § 6012(a)(1)(A), not § 6011(a). "General rule. Returns with respect to income taxes under subtitle A shall be made by the following: Every individual having for the taxable year gross income which equals or exceeds the exemption amount or more, . . ." 26 U.S.C. § 6012(a)(1)(A).

SIXTEENTH AMENDMENT HISTORY

5. In 1894, Congress enacted "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," 28 Stat. 509, Ch. 349. Section 27 (28 Stat. 553) wanting to impose an income tax on the worldwide income of citizens of the United States:

> That . . . there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad . . . .
>
> 28 Stat. 553.

6. The constitutionality of this section was challenged on the ground that the act passed by Congress was a direct tax that wasn't apportioned. The argument went before the United States Supreme Court in the case of *Pollock v. Farmers' Loan & Trust Company*. It was reported twice; once at 157 U.S. 429 (1895) and again at 158 U.S. 601 (1895).

7. The Supreme Court had to determine whether a tax on income was a direct tax, since only direct taxes required apportionment. In deciding this issue, the majority stated:

> We are now permitted to broaden the filed of inquiry, and to determine to which of the two great classes ***a tax upon a person's entire***

> ***income***,[2] whether derived from rents, or products, or otherwise, of real estate, or from bonds, stocks, or other forms of personal property, belongs; and ***we are unable to conclude*** that the enforced subtraction from the yield of all the owner's real or person property, in the manner prescribed, is so different from a tax upon the property itself, ***that it is not direct***, but an indirect tax, ***in the meaning of the Constitution***.
>
> *Pollock*, 158 U.S. at 618 (emphasis added).

8. The Supreme Court declared Section 27 unconstitutional as imposing a direct tax on income that was not apportioned:

> Second. We are of opinion that taxes on personal property,[3] or on the income of personal property, are likewise direct taxes.
>
> Third. The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate, and of personal

---

[2] The current federal income tax is upon a citizen's entire income, whether such income is derived from capital or labor. *See Eisner v. Macomber*, 252 U.S. 189, 205-06 (1920)("Income may be defined as the gain derived from capital, from labor, or from both combined").

[3] Labor and personal employment, by which labor and other services are exchanged for money or other forms of personal property, are personal property. *See Butchers' Union Co. V. Crescent City Co.*, 111 U.S. 746, 757 (1883)(Fields, J., concurring); *Coppage v. Kansas*, 236 U.S. 1, 14 (1914).

> property, being a direct tax, within the meaning of the constitution, and therefore unconstitutional and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid.
>
> *Pollock*, 158 U.S. at 637.

9. In 1909, President Taft called a special session of Congress. He asked Congress, to overcome the *Pollock* decision, to pass a proposed constitutional amendment. Congress obliged, and passed Senate Joint Resolution No. 40 as follows:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.
>
> Doc. 303, Exhibit A, p. 5; Declaration of Jeffrey A. Dickstein (hereinafter "JAD Decl.", ¶ 4, attached hereto as Exhibit A.[4]

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[4] Filed on January 23, 2009, is Doc. 303 requesting the Court to take judicial notice of certified copies of documents on file with the United States General Services Administration, National Archives and Records Service, and certified copies of documents on file in the archives of the several States. The copies are attached to Doc. 303 as Exhibits A-FF. The declaration of Jeffrey A. Dickstein, attached hereto as Exhibit A, attests to the fact of what is contained in those certified documents, and cites to the exhibits attached to Doc. 303 as support. The exhibits attached to Doc. 303 are copies of the original certified documents. The original certified documents are currently in the possession of Jeffrey A. Dickstein, except Exhibits M and FF. As to those documents, the

10. The proposed Sixteenth amendment was sent by the then Secretary of State, Philander Knox (hereinafter "Knox") to the governors of the forty-eight several states for consideration by the legislative bodies of those states. (Exhibit A, pp. 2-5). The various legislatures acted on the proposed amendment, and the Department of State received information from forty-two states with reference to the action taken by the legislatures of those states. (Exhibit A, p. 11). Those states were: (1) Alabama; (2) Arkansas; (3) Arizona; (4) California; (5) Colorado; (6) Connecticut; (7) Delaware; (8) Georgia; (9) Idaho; (10) Illinois; (11) Indiana; (12) Iowa; (13) Kansas; (14) Kentucky; (15) Louisiana; (16) Maine; (17) Maryland; (18) Michigan; (19) Minnesota; (20) Mississippi; (21) Missouri; (22) Montana; (23) Nebraska; (24) New Hampshire; (25) New Jersey; (26) Nevada; (27) New Mexico; (28) New York; (29) North Carolina; (30) North Dakota; (31) Ohio; (32) Oklahoma; (33) Oregon; (34) Rhode Island; (35) South Carolina; (36) South Dakota; (37) Tennessee; (38) Texas; (39) Utah; (40) Washington; (41) Wisconsin; and (42) Wyoming.

11. Four states, Connecticut, New Hampshire, Rhode Island and Utah rejected the proposed amendment, (Exhibit A, pp. 9, 12), bringing the number of states that allegedly ratified the proposed Sixteenth Amendment to thirty-eight (forty-two minus four equals thirty-eight).

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declaration of William J. Benson attached to Doc. 303 as Exhibit GG establishes that the copies of Exhibits M and FF are exact duplicates of the originals he obtained.

12. In a memorandum for The Chief Clerk of the Department of State, dated February 10, 1913, the Chief Clerk was notified that the vast majority of the certificates of ratification received contained language different from the language of the amendment proposed by Congress. The author of the memorandum, the Chief of the Bureau, presumed the Chief Clerk would refer the matter to the Solicitor for a report on the legality of the States' ratifications. (Exhibit A, pp. 7-9).

13. On February 15, 1913, the Solicitor prepared a Memorandum on the Ratification of the 16th Amendment to the Constitution of the United States. (Exhibit A, pp. 10-25).

14. The Solicitor first acknowledged the Secretary (Knox) had asked for a report, then set forth the history of the Congressional Resolution proposing the Sixteenth Amendment and its transmission to the legislatures of the states for ratification. (Exhibit A, pp. 1-2).

15. Commencing at page 6 of the memorandum, the Solicitor discussed the "Errors in Resolutions of the States Legislatures in quoting the Proposed 16th Amendment," noting that it appeared that only four of the resolutions quoted absolutely accurately and correctly the 16th Amendment as proposed by Congress, and the other resolutions contained errors either of punctuation, capitalization, or wording. (Exhibit A, p. 15). The various errors were then detailed. (Id. at pp. 16-17).

16. The Solicitor then discussed the Fourteenth and Fifteenth Amendments to the Constitution, and noted

that the resolutions of the States' legislatures also contained numerous errors (Exhibit A, pp. 17-23).

17. The Solicitor then noted that the "substantial errors of wording" of the 14th Amendment were deemed "immaterial" by the Executive Branch of the government, (Exhibit A, p. 23), and further as the amendment had been repeatedly before the courts, and had been enforced, "it is clear that the procedure in ratifying that amendment constitutes on this point a precedent which may be properly followed in proclaiming the adoption of the present amendment,–that is to say, that the Secretary of State may disregard the errors contained in the certified copies of the resolutions of legislatures acting affirmatively on the proposed amendment." (Id. at pp. 23-24).

18. The Solicitor fails to identify any case in which any Court that had enforced the Amendment had before it the argument that the Executive Branch's administrative determination of "immateriality" passed Constitutional muster. The Hirmers are aware of no case in which the issue of whether the Fifteenth Amendment was ratified has been before the courts.

19. The Solicitor then stated it seems clear to have been the intentions of the legislatures to accept and ratify the 16th Amendment as proposed by Congress, (Id. at p. 24), and stated:

> Again, the incorporation of the terms of the proposed amendment in the ratifying resolution seems in every case merely to have been by way of recitation. **In no case has any legislature signified in any way its deliberate**

intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

Furthermore, under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. It, therefore, seems **a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do**, but rather that it intended to do something that it had the power to do, namely, where its actions has been affirmative, to ratify the amendment proposed by Congress. **Moreover, it could not be presumed that by a mere change of wording probably inadvertent, the legislature had intended to reject the amendment as proposed by Congress** where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. For these reasons it is believed that the Secretary of State should in the present instance include in his declaration announcing the adoption of the 16th amendment to the Constitution the States referred to notwithstanding it appears that errors exist in the certified copies of Resolutions

passed by the Legislatures of those States ratifying such amendment.

Exhibit A, pp. 24-25 (emphasis added).

20. Knox then certified, in pursuance of Section 205 of the Revised Statutes of the United States, that the16th Amendment had been ratified by thirty-eight states, and was a part of the United States Constitution. (Exhibit A, pp. 40-42).

THE SOLICITOR IS CORRECT THAT A LEGISLATURE CANNOT ALTER IN ANY WAY THE AMENDMENT PROPOSED BY CONGRESS

21. The Solicitor correctly noted that "under the provisions of the Constitution, a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment." This proposition of law has been repeated throughout the history of the United States:

22. In his treatise, THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, Mr. Ames discusses the various attempts to amend Article V as to how proposed amendments should be ratified. One such attempt was introduced by Senator Davis of Kentucky. It provided that a proposed amendment should be submitted to the vote of the people of each State; a majority of the people entitled to vote in three-fourths of the several States should be necessary for its ratification.

23. In support of his resolution, Senator Davis is recorded as saying:

> '[I]t was unseemly, not in accord with the principles and analogies of our system of government, and unsafe in practice to submit amendments either to legislatures or conventions,' but the safest method, the one most in accord with the principles of our Government, 'is to submit a proposition **which can not be changed, nor modified nor altered**, to the sovereign people themselves.'
>
> AMES, THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR THE YEAR 1886, at 294 (Vol. II, Gov. Printing Office (1897) (emphasis added).

24. In discussing ratification by the States' legislatures, the Congressional Research Service states:

> Ratification by the State legislature is often by means of a joint resolution. The requirements as to what must be set forth in the ratification resolution are not enumerated either in Art. V of the Constitution or in statutory law and, thus, are determined from custom and practice. Arguably, two requirements seem to be legally indispensable in a valid ratification resolution. The first is that the resolution **contain in full the exact language of every section of the proposed amendment as it appears in the enrolled joint resolution proposing the**

amendment. This requirement is derived from the seeming impropriety of attaching conditions or reservations to the ratification. As a matter of historical fact, some States attempted to impose conditions upon the original ratification of the Constitution, but such leaders as Hamilton and Madison objected that this would be equivalent to rejection; as a result, each State accepted the Constitution with no reservations, 'the obligation to adopt the Bill of Rights being wholly moral.' (Orfield, *supra.*, p. 68) In any event, GSA has rejected ratification resolutions containing the language of the proposed amendment in incorrect or changed form or omitting certain sections. Precedent for such action seem to have originated when the ratification resolutions of the states of Kansas and Missouri for the 15th Amendment were considered void because the second section of the proposed amendment was inadvertently left out.[5]

> AMENDING THE FEDERAL CONSTITUTION–PROCEDURES OF THE GENERAL SERVICES ADMINISTRATION AND OF THE STATE LEGISLATURES, Report No. 80-89 A 731/77 at 8, Congressional Research Service (April 18, 1980)(emphasis added).

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[5] A critical point left out of the Solicitor's discussion of the Fifteenth Amendment in his Memorandum; that may be why he discussed the Fourteenth Amendment and not the Fifteenth Amendment.

25. A document on file with the National Archives is the April 20, 1911, Memorandum of the Solicitor of the United States regarding the necessity of a governor approving a State's ratification of a proposed amendment. In his Memorandum, the Solicitor quotes from a copy of a message of the Governor of Massachusetts which was enclosed in transmitting to the Secretary of State the resolution of the Massachusetts' Legislature ratifying the proposed 13th Amendment. The message contained the following:

> On a previous occasion I have had the honor to express to the general court some opinions of the competency of a State to superadd qualifications to those prescribed by the Constitution of the United States; and I beg respectfully to refer to a message transmitted to the general court of 1862 and printed as No. 132 of the Senate documents of that year, as including consideration of the general subject, which have application to this special case.
>
> On the day following the passage of the present Act of Ratification to a third reading in the House of Representatives, I received from the office of the Secretary of State of the United States, a coy duly authenticated by him, under date of February 2, of the Resolution of Congress proposing to the legislatures of the several States the Amendment to the Constitution of the United States, which has now been ratified by Massachusetts. Had I received this copy earlier, I should have transmitted it to the general court, for its information. **But since no difference appears between the language of the**

> **proposed amendment, as certified in this copy, and the recitation of it in the Act of the general court**, I have caused the copy to be filed by the secretary of the Commonwealth, with the public archives of his office, without such previous transmission.
>
> (Exhibit A, pp. 30-31)(emphasis added).

26. The Governor of Kentucky, in his message to both Houses, noted that **"the words 'on incomes' were left out of the resolution of the Congress, and if transmitted in this form would be void** and would subject the Commonwealth to unpleasant comment. (JAD Decl, p. 23, ¶ 79; Exhibit FF, pp. 2-3).

27. John W. Burgess, in his definitive work entitled POLITICAL SCIENCE AND COMPARATIVE CONSTITUTIONAL LAW, Vol. 1. pp. 149-150 (1890), applied this very same principle to constitutional amendments and declared:

> It may with some reason be held that another point is implied in the precedents, viz; that no commonwealth may insert any change in the proposition of the Congress nor ratify conditionally. Certainly the insertion of any change would be an exceeding of the powers conferred by the constitution of the United States upon the legislatures of the commonwealths in regard to this subject. The constitution confers upon them only ratifying powers; i.e., it confers upon them no powers of initiation.

THE SOLICITOR'S PRESUMPTIONS ARE DEMONSTRABLY FALSE

28. Three States, Missouri, Washington and Oklahoma, intentionally amended the resolution proposed by Congress. That such amendments were intentional is clear from an examination of the certified copies of the Senate and House Journals, and original resolutions, of those states. The details of the intentional amendments are set forth at pages 2-8, paragraphs 5-26 of the declaration of Jeffrey A. Dickstein, and is proven by the certified documents in Exhibits B-K.

29. Thirty-eight minus three equals thirty-five.

30. In the Tennessee Senate, the Committee on Constitutional Amendments offered an amendment to the resolution in the nature of a substitute, which was, on motion, adopted. (JAD Decl, pp. 8-10, ¶¶ 27-33).

31. Thirty-five minus one equals thirty-four.

32. If the contention of the General Services Administration, legal scholars and history, that it is legally indispensable that the States' resolutions "contain in full the exact language of every section of the proposed amendment as it appears in the enrolled joint resolution proposing the amendment," then the resolutions of six states, Vermont, Maryland, Arkansas, California, Kentucky and South Dakota cannot be counted as having ratified the resolution proposed by Congress.

33. The Senate and House Journals of these six states leave no doubt that what is contained in the

certificates of ratification sent to the Department of State is exactly what each state ratified. (JAD Decl., pp. 10-27, ¶¶ 34-92).

34. The legislatures of these six states ratified language different than the resolution proposed by Congress.

35. Thirty-four minus six is twenty-eight.

36. In addition, the Senate and House Journals from Kentucky show the Senate and the House passed different versions of House Res. 4. After this error was noted, the Senate voted against ratification by a vote of 22 to 9. (JAD Decl., p. 22, ¶ 76). The names of the twenty-two Senators who voted against ratification are listed in the Senate Journal. (Exhibit BB, pp. 44-45).

37. Thereafter the House passed House Res. 20, but the Senate rejected this version. (JAD Decl., pp. 24-25, ¶¶ 82-85).

37. Twenty-seven is less than the thirty-six mandated by U.S. CONST. art V.

PRIOR CASE LAW

38. The following Courts of Appeals have considered the Sixteenth Amendment issue: *United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236 (7th Cir. 1988); *Lysiak v. C.I.R.*, 816 F;2d 311 (7th Cir. 1987); *United States v. Sitka*, 845 F.2d 43 (2nd. Cir. 1988), *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986);

and *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991.)

39. These cases hold the federal courts lack the judicial authority to decide whether a sufficient number of states voted to ratify the 16th Amendment, relying upon the judicially created "enrolled bill rule" and the "political question doctrine" to sustain their rulings. The cases are wrongly decided for all the reasons set forth herein and in the Hirmers' Memorandum in Support of their Motion to Dismiss, filed concurrently herewith. The claims, defenses, and other legal contentions herein are warranted by existing Supreme Court authority holding the administrative function of an executive department official, such as the Secretary of State in complying with Revised Statute 205, may be reviewed for compliance with congressional enactment, *Marbury v. Madison*, 5 U.S. 137 (1803), and legislative journals may be reviewed to determine if a law was, in fact, passed, *United States v. Balin*, 144 U.S. 1 (1892).

REVISED STATUTE 205, TO THE EXTENT IT ALLOWS THE UNITED STATES CONSTITUTION TO BE AMENDED BY FALSE PRESUMPTION, VIOLATES U.S. CONST. ART V, AND IS UNCONSTITUTIONAL

Congress had enacted Revised Statute 205, which was in force at the time the 16th Amendment was proposed by Congress and sent to the several States for ratification. (*See* Exhibit A, p. 3). This statute read:

> Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United

> States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

"The provisions of the Constitution" are contained in Article V, which reads in pertinent part:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States,....
>
> U.S. CONST. art V.

Accordingly, Revised Statute 205 imposed an administrative duty[6] on the Secretary of State to insure that thirty-six states actually ratified what was proposed by Congress. Neither the Constitution nor the revised statute identifies the type of "official

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[6] *See Marbury v. Madison*, 5 U.S. 137 (1803) as discussed in the Hirmers' Memorandum in Support of their Motion to Dismiss, filed concurrently herewith.

notice" required. The several States, however, which each received a copy of Revised Statute 205 from Knox, provided "official notice" in the form of a certified copy of the enrolled resolution passed by its legislature, or in the case of Kentucky, a certified copy of its legislative journals. (See Exhibit A, pp. 45-86).

Knox violated his administrative duty when he ignored the various enrolled resolutions he received, which are binding on the federal judiciary (*see Field v. Clark*, 143 U.S. 649 (1892)), and instead relied on presumptions for which he had no evidence in support, and which presumptions were false in light of at least three states intentionally amending the language proposed by Congress.

A declaration of an executive department official that he has complied with an administrative duty does not fall within the definition of an enrolled bill with its attendant irrebuttable presumption. The Congress, in enacting Revised Statute 205 did not amend U.S. CONST. art V, nor could it. *Marbury v. Madison*, 5 U.S. 137, 173 (1803)("The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.") Thus, constitutional amendment by administrative presumption of legislative intent in the face of proof of actual legislative intent, itself violates U.S. CONST. art V. To the extent Revised Statute 205

is held by the courts to allow the constitution to be amended by presumption, it is unconstitutional.

The enrolled resolutions of the various states constitute conclusive evidence of precisely what was passed by each state. Those resolutions either correctly cite the language proposed by Congress, or they do not. If they do not, and especially when the several States took affirmative action to intentionally amend the language proposed by Congress, then the several States did not ratify what Congress proposed; the actions of those states cannot be counted as valid ratification.

Less than the constitutionally mandated thirty-six states voted to ratify the proposed 16th Amendment. In the absence of the 16th Amendment, the federal income tax today is just as unconstitutional as it was in 1895 as it imposes a direct tax on real and personal property that is not apportioned.

CONCLUSION

The federal income tax is unconstitutional as imposing an unapportioned direct tax on real and personal property. *See Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429, *aff. Reh.*, 158 U.S 601 (1895). The United States, by including its allegations that the federal income tax is authorized by the 16th Amendment, and choosing to prosecute the defendants for the exercise of their freedom of speech in presenting this political issue to others, seeks to directly present the issue to the jury. Defendants cannot be convicted for violating a law that does not exist, either in the form of a conspiracy or evasion. Counts 1 and 3 of the indictment must be dismissed.

WHEREFORE, Mark and Claudia Hirmer move the Court to dismiss counts 1 and 3 of the indictment.

Dated: January 24, 2009.

/s/ Jeffrey A. Dickstein
Jeffrey A. Dickstein
Attorney for Defendants Claudia Hirmer
And Mark Hirmer
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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record, and e-mailed a copy to Defendant pro se, Arnold Ray Manansala, at arnie4444@gmail.com.

/s/ Jeffrey A. Dickstein

Doc 305-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:08-cr-79

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
Claudia Constance Hirmer, et al.,	)
	)
Defendants.	)
	)

DECLARATION OF JEFFREY A. DICKSTEIN IN SUPPORT OF MARK AND CLAUDIA HIRMER'S MOTION TO DISMISS COUNTS 1 AND 3 OF THE INDICTMENT (SIXTEENTH AMENDMENT NOT RATIFIED)

I, Jeffrey A. Dickstein, have personal knowledge of the following facts:

1. The motion of Defendants Claudia and Mark Hirmer asking the Court take judicial notice of certain documents on file in the National Archives and various States (Doc. 303)[1], contains copies of certified

[1] All subsequent references herein to Exhibits are to the Exhibits attached to the Request for Judicial Notice, Doc. 303.

documents, the originals of which are in my personal possession. Upon the request of either the Court, counsel for the United States, or counsel for the other defendants, I will make the originals available for inspection and comparison to the copies attached as Exhibits A-FF to the Request for judicial notice.

2. As to the documents identified as the Tennessee House Journal, Exhibit M, and pp. 440-43 of the Kentucky House Journal, Exhibit FF, the originals are not in my possession. The Declaration of William J. Benson, attached as Exhibit GG to the Request for Judicial Notice, attests that the copies of the certified documents are true and correct copies of the originals that he obtained while visiting the Tennessee and Kentucky State capitals.

3. I have personally read each and every document of which the Hirmers request the Court judicially notice, and based on said reading, declare that said documents contain the following facts.

4. The certified copy of Senate Joint Res. 40 proposing the Sixteenth Amendment, passed by the United States Congress, and transmitted to the several states, contains the following language for the text of the proposed amendment:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.
>
> (Exhibit A, p. 5).

Missouri

5. On February 15, 1911, Senator McAllister introduced Senate Joint and Concurrent Resolution No. 8, entitled "A Joint and concurrent resolution of the House and Senate ratifying the proposed amendment to the Constitution of the United States submitted by the Sixty-first Congress." It was read the first time and 400 copies were ordered printed. (Exhibit B, pp. 19-20). A certified copy of the actual Joint and Concurrent Resolution No. 8 shows that the word "lay" was scratched out and replaced with the word "levy." (Exhibit D, p. 4).

6. On February 20, 1911, Senator Dunwoody moved for adoption of Joint and Concurrent Resolution No. 8, which motion was laid over informally. (Exhibit B, p. 23). The next day, the resolution was taken up, read a second time, and referred to Committee on Ways and Means. (Exhibit B, p. 25). On February 22, 1911, the Committee reported it had examined Joint and Concurrent Resolution No. 8 and recommended that it pass. (Exhibit B, p. 27). On February 27, 1911, on motion of Senator Humphrey, the resolution was ordered engrossed and printed. (Exhibit B, p. 29).

7. On March 3, 1911, the Committee on Engrossed Bills reported it found Joint and Concurrent Resolution No. 8 had been correctly engrossed. (Exhibit B, p. 31). On March 7, 1911, the resolution was taken up, read a third time, put to vote, and passed. (Exhibit B, p. 34).

8. On March 8, 1911, the House received a message from the Senate that it had passed Joint and Concurrent Resolution No. 8. (Exhibit C, p. 29). On

March 9, 1911, the resolution was read the first time in the House. (Exhibit C, p. 32). On March 10, 1911, the resolution was read a second time and referred to the Committee on Ways and Means. (Exhibit C, p. 35). On March 14, 1911, the Committee on Ways and Means reported that it had examined Joint and Concurrent Resolution No. 8 and recommended that it pass. (Exhibit C, pp. 38-39). On March 16, 1911, Mr. Hull moved that Senate Joint and Concurrent Resolution No. 8 be substituted for House Joint and Concurrent Resolution No. 16. The motion carried; Senate Joint and Concurrent Resolution No. 8 was read a third time and passed by the House. (Exhibit C, p. 42).

9. On March 17, 1911, the Senate received a message from the House that it had passed Senate Joint and Concurrent Reolution No. 8. (Exhibit B, p. 48). On March 20, 1911, the President of the Senate announced the enrolled joint and concurrent resolution had passed both branches of the General Assembly, was read at length by the Secretary, and was signed, (Exhibit B, p. 101), and the same was reported to the House (Exhibit C, pp. 46-47).

10. The scrupulous adherence to procedure for the passage of a resolution, evidenced not only by the House and Senate Journals of the State of Missouri, but as recorded by the hand written notes upon the resolution itself (see Exhibit D) shows that the original language of the proposed Sixteenth Amendment was intentionally changed. The word "lay" was scratched out and replaced with the word "levy." The General Assembly ratified the changed language, and correctly reported the same to Secretary of State Knox. The copy of the enrolled bill of Senate Joint and Concurrent

Resolution No. 8 on file in the National Archives shows Missouri passed the following:

> The Congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration;

(Exhibit A, p. 43).

Washington

11. On January 11, 1911, Senator Bryan submitted Senate Joint Res. No. 1. The rules were suspended on motion, the resolution was read a second time, ordered printed and referred to the Committee on Revenue and Taxation, when appointed. (Exhibit E, pp. 5-6). On January 17, 1911, the Committee recommended that the resolution be placed on general file, which report was adopted. (Exhibit E, p. 24).

12. On or about January 23, 1911, the secretary read Senate Joint Res. No. 1. On motion of Senator Bryan the resolution was amended by striking the comma after the word "States" and by striking the letter "s" from the word "incomes". On motion of Senator Falconer, further consideration of the resolution was made a special order for Wednesday, January 25th. (Exhibit E, p. 25). On motion of Senator Jackson, the special order to consider the joint resolution was advanced to the next day. (Exhibit E, p. 59).

13. The next day, January 26, 1911, Senate Joint Res. No. 1 was read a third time, put to a vote, and

passed. It was ordered that the resolution be immediately transmitted to the House. (Exhibit E, p. 62).

14. The House received a message from the Senate dated January 26, 1911, that it had passed Senate Joint Res. No. 1. (Exhibit F, p. 8). The resolution was read a first time and referred to Committee on Revenue and Taxation. (Exhibit F, p. 9). It was subsequently taken from the Committee on Revenue and Taxation, substituted for House Concurrent Res. No. 3, and considered under second reading, and was read in full by sections. The second reading was considered the third reading on suspended rules; the resolution was placed on final passage, and passed by the House. (Exhibit F, pp. 10-11).

15. The Senate was notified that the House has passed Senate Joint Res. No. 1. (Exhibit E, p. 63). Thereafter, the committee on enrolled bills compared the enrolled bill with the engrossed bill and found it had been correctly enrolled. A certified copy of Senate Joint Res. No. 1 correctly shows the intentional amendments made on the motion of Senator Bryan: there is no comma after the word "state" and there is no "s" after the word "income." This enrolled bill, with the amendments (Exhibit G), is what was sent to Secretary of State Knox, as confirmed by the documents on file with the National Archives. (Exhibit A, pp. 44-46).

Oklahoma

16. The House received a letter from the Governor dated February 10, 1910, transmitting a copy of Senate Joint Res. 40. (Exhibit H, p. 26). On February

11, 1910, Messrs. Wortman and Terral introduced House Joint Res. No. 5, and it was read the first time. (Exhibit H, p. 29). On February 23, 1910, House Joint Res. No. 5 was read the second time and referred to the Committee on Criminal Jurisprudence. (Exhibit H, p. 31). On February 25, 1910, House Joint Res. No. 5 was reported out of Committee with the recommendation that it pass. (Exhibit H, p. 34).

17. On March 3, 1910, in the House, the Committee of the Whole House recommended that House Joint Res. No. 5 pass. On motion of Mr. Tillotson, the resolution was ordered engrossed, placed on third reading and final passage. (Exhibit H, p. 66).

18. On March 3, 1910, in the Senate, Senator Graham introduced Senate Concurrent Res. No. 23 containing the following language:

> Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.[2]

On the question of whether the resolution should be accepted, the vote was 32 yeas and no nays. (Exhibit J, p. 18).

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[2] Although Senate Concurrent Res. No. 23 correctly recited the proposed Sixteenth Amendment passed by Congress, Oklahoma instead passed House Joint Res. No. 5 that intentionally amended the language of the proposed amendment.

19. On March 4, 1910, in the House, the Committee on Engrossment reported House Joint Resolution No. 5 was correctly engrossed. (Exhibit I, p. 6). The resolution was read a third time, and by unanimous consent, Senator Graham was added as one of the authors. (Exhibit H, p. 69). It was thereafter passed by a vote of 89 yeas, 2 nays, with 17 absent. The Speaker declared the resolution was passed and signed the same in open session. (Exhibit H, p. 70). The same day, Senate Concurrent Res. No. 23 was read in the House the first time and was referred to the "Committee on Judiciary and Judicial Departments. (Exhibit H, p. 74).

20. On March 4, 1910, the Senate received a message from the House transmitting House Joint Res. No. 5, a resolution ratifying a proposed amendment to the Constitution of the United States, providing for the levying and collecting of taxes on incomes, which was read the first time. (Exhibit J, p. 20). On March 5, 1910, House Joint Res. No. 5 was read a second time and referred to the Committee on Legal Advisory. (Exhibit J, p. 22).

21. On March 8, 1910, the House received a message from the Senate that House Joint Res. No. 5 was in the committee on Legal Advisory. (Exhibit H, p. 94).

22. On March 9, 1910, the Committee on Legal Advisory reported its recommendation that House Joint Res. No. 5 be passed as amended. The resolution was placed on the calendar under the head of general orders. (Exhibit J, p. 25). Thereafter, Senator Thomas asked unanimous consent to withdraw the report of

the Committee on Legal Advisory on House Joint Res. No. 5, and the request was granted. (Exhibit J, p. 26).

23. Senator Thomas then reported on behalf of the Committee on Legal Advisory that House Joint Res. No. 5 be amended, and pass as amended. On motion of Senator Thomas, the report was adopted. House Joint Res. No. 5, as amended, was read as follows:

> Article 16. The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

On the question of whether the resolution pass as amended by the Senate, the roll was called, and the vote was 37 yeas and no nays. The President then declared the resolution, as amended by the Senate, passed. The engrossed copy of the resolution, as amended by the Senate, was signed by President Pro Tempore, Mr. Graham, and ordered transmitted to the House. (Exhibit J, pp. 26-27).

24. On March 10, 1910, the House received a message from the Senate that it had passed House Joint Res. No. 5 as amended, and transmitted a copy, with the amendments, for House consideration. The Senate amendments were read, and Mr. Terral moved that the House agree to the Senate amendments. The House concurred by the vote of 91 yeas, no nays, with 17 absent. The Speaker declared the motion carried. (Exhibit H, pp. 108-09).

25. On March 10, 1910, the Senate received a message from the House transmitting the enrolled

copy of House Joint Res. No. 5 signed by the Speaker. The enrolled copy was read the fourth time at length and signed by Mr. Graham. The signed enrolled copy was ordered transmitted to the House. (Exhibit J, p. 29). The House then received a message from the Senate that the engrossed copy of House Joint Res. No. 5 had been compared with the enrolled copy and found to be correct, and was being transmitted to the House for signature. The enrolled copy was read at length and signed by the Speaker in open session. (Exhibit H, p. 111). Later, the House received a message from the Senate that the President pro tempore of the Senate had signed the enrolled version of House Joint Res. No. 5. (Exhibit H, p. 112). Exhibit K is a certified copy of the enrolled House Joint Res. No. 5.

26. On February 26, 1912, upon being advised that Knox had not received notice from Oklahoma, the Secretary of State of Oklahoma sent Knox a certified copy of House Joint Res. No. 5 showing Oklahoma had passed the following language, per the amendments of the Senate:

> Article 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration. (Exhibit A, pp. 47-49).

Tennessee

27. Senate Joint Res. 14 was introduced by Senator Jones. (Exhibit L, p. 6). It was referred to the Committee on Constitutional Amendments. (Exhibit L, p. 8). On April 6, 1911, the Committee recommended passage of S.J. Res. 14 "with committee amendment."

(Exhibit L, p. 14). According to the Senate Journal: "The Committee on Constitutional Amendments offered an amendment to the resolution in the nature of a substitute," which was, on motion, adopted by the following vote: Ayes 24, Noes 4. (Exhibit L, p. 14). The Senate Journal does not reflect how the proposed Sixteenth Amendment was amended by the Committee; the Public Acts of the State of Tennessee, however, shows it was amended by changing the word "incomes" to the word "income." (Exhibit N, p. 4).

28. Later on April 6, 1911, the Senate Committee on Enrolled Bills found Senate Joint Res. No. 14 correctly enrolled and ready for transmission to the House. (Exhibit L, p. 15). The message was received in the House the same day; the resolution was adopted for concurrence. (Exhibit M, p. 6).

29. On April 7, 1911, in the House, Mr. Worley moved that the resolution be rejected. On motion of Mr. Puryear, the motion to reject was tabled. Mr. Worley moved that the resolution be tabled. The motion to table failed. Thereafter the resolution was passed, the vote being 82 Ayes and 3 Noes. A motion to reconsider was tabled. (Exhibit M, pp. 8-9).

30. On April 7, 1911, the Senate Committee on Enrolled Bills found Senate Joint Res. No. 14 correctly enrolled and ready for signature by the Speaker. (Exhibit L, p. 18). The Speaker announced his official signature to the resolution. (Exhibit L, p. 19).

31. On April 10, 1911, the House received a message from the Senate that it was transmitting Senate Joint Res. No. 14 for signature by the Speaker of the House. (Exhibit M, p. 10). Later that day, the

Speaker of the House announced he had signed the resolution, (Exhibit M, p. 11), and the Senate received a message from the House that it was returning Senate Joint Res. No. 14 signed by the Speaker of the House. (Exhibit L, p. 20).

32. On April 11, 1911, the Committee on Enrolled Bills reported it had delivered the resolution to the Secretary of State. (Exhibit L, p. 23).

33. The certificate of ratification on file with the National Archives (Exhibit A, pp. 50-51) shows what was ratified was precisely the same as proposed by Congress, and is different from what is contained in the Public Acts, which shows the word "incomes" was changed to the word "income." (Exhibit N, p. 4).

Vermont

34. On October 12, 1910, the Vermont House received a letter from the Governor in which he transmitted a certified copy of the Congressional Joint Resolution regarding the proposed Sixteenth Amendment, together with an address to the House and the Senate recommending against ratification. The documents were referred to the committee on Federal Relations. (Exhibit O, pp. 28-31).

35. On October 26, 1910, Mr. Calderwood of the House offered an un-numbered, un-titled, joint resolution, in which the word "State" was changed to "state", calling for the joint resolution to be referred to a joint committee consisting of the standing Committees on Federal Relations of both the Senate and House to consider and report to their respective Houses such action as deemed proper. (Exhibit P, p. 2;

Exhibit O, p. 32). The resolution was read and adopted. (Exhibit O, p. 32).

36. On October 27, 1910, the House received a message from the Senate that it had adopted the joint resolution [of referral to a joint committee] relating to the proposed amendment to the Constitution of the United States. (Exhibit O, p. 33).

37. On October 28, 1910, the House received a message from the Governor, by Mr. Kingsley, Secretary of Civil and Military Affairs, that the Governor approved and signed "Joint Resolution 40 relating to the proposed amendment to the Constitution of the United States."[3] (Exhibit O, p. 34).

38. On Tuesday, December 13, 1910, the Joint Committee on Federal Relations issued its report containing a joint resolution in the following words:

> The Congress shall have power to pay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration;

and recommended the joint resolution not be adopted on the part of the House. (Exhibit O, pp. 37-38). The question was called "Will the House adopt the joint

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[3] At this point there is no record in either House of the joint resolution coming out of the joint committee or of any vote on a resolution to ratify the proposed Sixteenth Amendment. Logic dictates the Governor approved the joint resolution to refer the Sixteenth Amendment issue to the Joint Committee on Federal Relations.

resolution reported by the committee?" On motion, the joint resolution was ordered to lie and be made a special order for Wednesday afternoon next at two o'clock and fifteen minutes. (Exhibit O, p. 38.)

39. The next day, the joint resolution was taken up as a special order, the question was again asked, and on motion, the joint resolution was ordered to lie. (Exhibit O, p. 39). On Thursday, January 12, 1911, the joint resolution was again called up, the question was asked, and on motion, was ordered to lie and be made a special order for Tuesday next. (Exhibit O, p. 40).

40. On Tuesday, January 17, 1911, the joint resolution was taken up on special order, the question was asked whether the joint resolution should be adopted, and the question was answered in the negative, the vote being 45 yeas and 143 nays. (Exhibit O p. 41). On the same day, the Senate voted against reading the joint resolution for a third time, by a vote of 10 yeas and 14 nayes. (Exhibit Q, p. 43).

41. On November 8, 1912, the Senate received a message from the House that a Joint resolution relating to proposed amendment to the Constitution of the United States concerning income tax was adopted, and the concurrence of the Senate was requested. (Exhibit S, p. 25). This joint resolution was read and adopted the same day. The joint resolution was titled "Joint Resolution Relating to the Proposed Amendment of the Constitution of the United States Concerning Income Tax and called for the following amendment to the United States Constitution:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source

> derived, without apportionment among the several states, and without regard to any census or enumeration;

to be referred to a joint committee consisting of the standing committees on Federal Relations of both the Senate and the House of Representatives to consider and report to their respective houses such action thereon as they judge proper. The President of the Senate directed the joint resolution be referred as stated. (Exhibit S, pp. 26-27). The joint resolution was approved by the Governor on November 12, 1912. (Exhibit S, p. 28).

42. On February 5, 1913, the Senate received a message from the House that it had adopted, on their part, the joint resolution respecting amendment to the Constitution of the United States relating to incomes and requested Senate concurrence. (Exhibit S, p. 29). The joint resolution was read the first and second times and referred to the Committee on Federal Relations. (Exhibit S, p. 3).

43. On February 18, 1913, in the Senate, Mr. Dale, from the Committee on Federal Relations reported in favor of adoption of the joint resolution. On the question of whether the joint resolution should be adopted, the vote was 13 yeas and 11 nays. (Exhibit S, p. 37).

44. On February 19, 1913, the House Journal reports a joint resolution from the Senate:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the

> several states, and without regard to any census or enumeration;

was read and adopted in concurrence. (Exhibit R, p. 38).

45. Thereafter, Mr. Watson of the House offered a joint resolution directing the Secretary of State to notify the Department of State of the United States that the State of Vermont ratified the following language:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration;

which was read and adopted on the part of the House. (Exhibit R, pp. 39-40).

46. On February 21, 1913, the House received notification from the Governor that he had approved this joint resolution. (Exhibit R, p. 45).

47. The certificate of ratification on file with the National Archives shows what was sent to Knox was exactly what had been ratified by the Vermont legislature; i.e., with the word "States" changed to "states." (Exhibit A, pp. 52-53).

Maryland

48. On January 26, 1910, a copy of the Joint Resolution passed by Congress was introduced in the House, read, and referred to the Committee on

Judiciary. (Exhibit T, p. 5). On March 7, 1910, an unnumbered House Joint Resolution ratifying an amendment to the Constitution of the United States of America was read the first time and referred to the Committee on Judiciary. (Exhibit T, p. 7).

49. On March 15, 1910, House Joint Res. No. 2 came out of the Committee on Judiciary as follows:

> Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment amount the several States, without regard to any census or enumeration.

(Exhibit T, p. 9). The Committee on Judiciary had amended the language proposed by Congress by: inserting the word "the" before the word "power"; removing the "," after the word "incomes"; removing the "," after the word "derived"; and removing the word "and" before the word "without". The report was adopted by the House. (Exhibit T, p. 9).

50. On March 21, 1910, House Joint Res. No. 2 was read a third time exactly as it had come out of committee, was passed by the House, and sent to the Senate. (Exhibit T, pp. 11-12).

51. The same message the Governor sent to the House on January 26, 1910, was received by the Senate on January 27, 1910. The amendment proposed by Congress was read and referred to the Committee on Federal Relations. (Exhibit U, pp. 27-28).

52. On March 24, 1910, the message from the House that it had passed House Joint Res. No. 2 was

distributed to the Senate. House Joint Res. No. 2 was read the first time, exactly as it had passed the House, and was referred to the Committee on Federal Relations. (Exhibit S, pp. 31-32). An unfavorable report from the Committee on Federal Relations on House Joint Res. No. 2 was presented to the Senate on March 30, 1910. Mr. Campbell moved that the resolution be substituted for the unfavorable report, and consideration of that motion be made the order of the day for March 30th at 8:00 p.m., which motion prevailed. (Exhibit U, pp. 34-35).

53. On March 31, 1910, the President of the Senate called up the special order on the motion of Mr. Campbell that House Joint Res. No. 2 substitute for the unfavorable report of the Committee on Federal Relations. The motion prevailed and the resolution was read the second time exactly as it had passed the House. (Exhibit U, pp. 37-38).

54. On April 4, 1910, House Joint Res. No. 2 was read the third time, exactly as it had passed the House, and was passed by the Senate. The resolution was then returned to the House. (Exhibit U, p. 40). The House received House Joint Res. No. 2 from the Senate the same day. (Exhibit T, pp. 14-15).

55. The records contained in the National Archives show a letter dated June 22, 1910 from the Secretary of State of Maryland to Knox enclosing a certified copy of Joint Resolution No. 8, to which was attached a copy of the purported joint resolution passed by the Maryland Legislature. The purported joint resolution that was attached does not contain anywhere within it that it is Joint Resolution No. 8; it reads "Joint Resolution. January Session 1910. Chapter 8." It is

certified by the Clerk Court of Appeals of Maryland as having been approved in both houses of the legislature on April 8, 1910. (Exhibit A, pp. 54-56).

56. The House was adjourned at 12 o'clock midnight on April 4, 1910, as reported in both the House Journal, (Exhibit T, p. 15) and in the Maryland Manual (Exhibit V, p. 6). The latter source pertains to the General Assembly of Maryland, which includes both the House and the Senate.

57. A review of the pages of the House and Senate Journals show no discussion of a "Joint Resolution No. 8."

Arkansas

58. A letter dated March 28, 1911, from the Governor of Arkansas to Knox, advised that a resolution which read:

> Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumerator

had passed the House of Representatives but failed to pass in the Senate. (Exhibit A, p. 57).

59. On April 12, 1911, Senate Joint Resolution No. 7 was read a third time. Senator Martin moved that the resolution be postponed until April 13. The motion failed. (Exhibit W, p. 9).

60. On April 17, 1911, Senate Joint Res. No. 7, being a special order, was taken up. Senator Covington moved to indefinitely postpone the resolution; the motion lost. (Exhibit W, p. 10). A vote was taken on whether the resolution should pass, and it did pass. A motion was made by Senator Rodgers that the vote be reconsidered, and that motion laid on the table. (Exhibit W, p. 11).

61. On April 18, 1911, the House was informed that the Senate had passed Senate Joint Res. No. 7. (Exhibit X, p. 21). The resolution was taken up by the House on April 21, 1911, and read a first time and second time on suspended rules, as follows:

> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, and without regard to any census or enumeration.

and was made a special order for the next day. (Exhibit X, p. 22). The resolution to be ratified was different than the resolution passed by Congress: 1) the word "The" was omitted before the word "Congress"; the comma was omitted after the word "incomes"; and the comma was omitted after the word "derived".

62. The next day, April 22, 1911, the proposed resolution was read a third time, in the exact from it had previously been read, and put to vote. It passed. A motion to reconsider the vote and that the motion be laid on the table prevailed. (Exhibit X, p. 23).

63. On June 8, 1911, the Secretary of State of Arkansas sent a certified copy of Senate Joint Resolution No. 7 to Knox. (Exhibit A, p. 58). According to the certified certificate of ratification, the Arkansas Legislature passed the following:

> Article XVI. Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to any census or enumeration.

(Exhibit A, pp. 59-60). The certificate of ratification contains not only language different from that passed by Congress, but different from what the journals show was passed by the Arkansas legislature. If the certified copy is used, then the Legislature of Arkansas amended the proposed language of the Sixteenth Amendment by leaving off the word "The" before the word "Congress", adding the word "the" before the word "power", changing the word "States" to "states", omitting the comma after the word "incomes"; and omitting the comma after the word "derived".

California

64. On August 5, 1909, the State of California acknowledge by letter to Knox that it had received a certified copy of the proposed Sixteenth Amendment. (Exhibit A, p. 61). On January 5, 1911, Senator Sanford introduced Senate Joint Res. No. 2 which was referred to Committee on Federal Relations. (Exhibit Y, p. 5). At that time, the resolution read as follows:

SENATE JOINT RESOLUTION

Ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.

WHEREAS, The Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, QOPO, proposed an amendment to the Constitution of the United States, in words and figures as follows:

Article) XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration.

NOW, THEREFORE BE IT RESOLVED BY THE SENATE OF THE STATE OF CALIFORNIA AND THE ASSEMBLY, JOINTLY,

That the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby approved and ratified.

(Senate Joint Resolution, Exhibit AA, pp. 2-3).

65. On January 19, 1911, the Committee on Federal Relations recommended the resolution pass as amended, and it was ordered on file. (Exhibit Y, p. 9).

66. On January 20, 1911, Senate Joint Res. No. 2 was read. During the reading, the following amendments were submitted by the Committee:

> On page 1, line 3, strike out the letters in capitals "Q. O. P. O.," and insert in lieu thereof "1909."
>
> On page 1, line 10, strike out the semicolon and insert in lieu thereof a period; strike out all of the remainder of line 10 after the semicolon and all of lines 11, 12, 13 and 14, and insert in lieu thereof the following: "Now, therefore, be it *Resolved by the Senate and Assembly, jointly*, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the eighty-sixth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified."
>
> (Exhibit Y, p. 11).

According to the hand written notes scribed on Exhibit AA at p. 9, Amendment No. 2 of the Committee read as follows:

> On page 1, line 10, strike out the semicolon and insert in lieu thereof a period; strike out all of the remainder of line 10 after the semicolon and all of lines 11, 12, 13 and 14, and insert in lieu thereof the following: "Now, therefore, be it *Resolved by the Senate and Assembly, jointly*, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the 16th amendment to the Constitution of the United

> States and said proposed constitutional amendment is hereby approved and ratified."

and it was this amendment from the Committee that was adopted. Senate Joint Res. No. 2 was then ordered to print and engrossment.

67. On January 23, 1911, Senate Joint Res. No. 2 was read in the following form:

> WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration; now, therefore, be it
>
> *Resolved by the Senate and Assembly, jointly*, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the sixteenth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.

On the question of whether this resolution should be adopted, the roll was called, the question was answered in the affirmative, and the resolution was

ordered transmitted to the Assembly. (Exhibit Y, p. 14).

68. The actual engrossed version of Senate Joint Resolution No. 2 left out the year "1909" on line 3, and used the word "16th" on line 14. (Exhibit AA, p. 11). The engrossed version reads:

> WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration; now, therefore, be it
>
> *Resolved by the Senate and Assembly, jointly*, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the 16th amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.

(Exhibit AA, p. 11).

69. On January 30, 1911, on motion of Mr. Young, Senate Joint Resolution No. 2 was taken up for consideration by the House, and on motion of Mr. Jones, was passed on file. (Exhibit Z, p. 7). The next

day, the resolution was read, on motion adopted, and ordered transmitted to the Senate. What the Assembly adopted was:

> WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration; now, therefore, be it
>
> *Resolved by the Senate and Assembly, jointly*, That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the sixteenth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.

(Exhibit Z, p. 9).

63. On February 3, 1911, the Assistant Secretary of the Senate, on behalf of the Secretary of the Senate, reported Senate Joint Res. No. 2 as correctly enrolled. (Exhibit AA, p. 4).

70. While it is possible from the above than an argument could be made that the Legislature of California did not pass the same Joint Resolution in

that the "1909" was omitted in the House version, it cannot be gainsaid that they did pass the same wording as relates to the actual language of the proposed Sixteenth Amendment:

> Article XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration

which language differs from the proposed language passed by Congress. The word "The" was omitted before the word "Congress", the "," was omitted after the word "incomes", the word "States" was changed to "states", and the word "or" was omitted after the word "census".

71. The version passed in the House is what was sent to Knox as the certified copy of Senate Joint Res. No. 2. (Exhibit A, pp. 62-64).

Kentucky

72. On January 26, 1910, in the House, Mr. Brooks of the Committee on Federal and State Constitutional Amendments, to which House Res. No. 4 had been referred, reported the following resolution:

> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration.

The resolution was adopted. (Exhibit BB, pp. 10-12).

73. The next day, January 27, 1910, the Senate received a message from the House that it had adopted H. Res. 4. The Senate suspended its rules and took up the resolution for consideration. As received in the Senate, the words "on incomes" were missing; H. Res. 4 read:

> ARTICLE XVI. The Congress shall have power to lay and collect taxes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Upon the question of whether the Senate should concur in the adoption of the resolution, it was decided in the affirmative. (Exhibit BB, pp. 38-39). Thus, the Senate and the House in Kentucky passed different versions of H. Res. 4.

74. On January 31, 1910, the House received a message from the Senate announcing that it had concurred in H. Res. 4. (Exhibit BB, p. 13).

75. On February 2, 1910, Mr. Fulton of the Committee on Enrollments reported the Committee had examined and found H. Res. 4 correctly enrolled. The resolution was read at length and compared in open House and thereupon the Speaker, in open session, affixed his signature. The Enrolling Clerk was ordered to deliver the resolution to the Senate. (Exhibit BB, p. 15). In the Senate, Mr. Tichenor of the Committee on Enrollments reported the Committee had examined the enrolled resolution and found the same to be correctly enrolled. The President of the Senate affixed his signature, delivered it to the Committee to be returned to the House of

Representatives. (Exhibit BB, pp. 41-42). Thereafter, the Enrolling Clerk of the House delivered the original and enrolled resolution, signed by the President of the Senate, into the possession of the Chief Clerk of the House, who was ordered to deliver the enrolled resolution to the Governor. (Exhibit BB, p. 15).

76. Someone apparently recognized that the Senate and House had passed different versions, and an attempt was made to correct the deficiency. On February 8, 1910, the Senate received a message from the House announcing it had adopted H. Res. 4; what the Senate received, showed the word "source" was changed to "sources" and the comma after "incomes" was omitted:

> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration.

Upon the question of whether the Senate should concur in the adoption of the resolution, the votes in the affirmative were 9, and in the negative were 22. (Exhibit BB, pp. 44-45). Thus the Senate voted against concurring in the adoption of the resolution.

77. Notwithstanding the vote, on February 9, 1910, the House received a message from the Senate announcing that it had concurred in H. Res. 4. (Exhibit BB, p. 17). The next day, February 10, 1910, Mr. Fulton of the Committee on Enrollments reported it and examined and found H. Res. 4 correctly enrolled. The resolution was read at length and compared in the House and thereupon the Speaker, in open session,

affixed his signature. The Enrolling Clerk was ordered to deliver the resolution to the Senate. (Exhibit BB, p. 19).

78. On February 11, 1910, in the Senate, Mr. Gus Brown of the Committee on Enrollments reported that the Committee had examined H. Res. 4 and found it to be correctly enrolled. The resolution was read at length and compared in the Senate and found to be correctly enrolled. Whereupon the President, in open session of the Senate, affixed his signature. The resolution was delivered to the Committee to be returned to the House of Representatives. (Exhibit BB, pp. 47-48).

79. On February 11, 1910, the House received a message from the Governor regarding H. Res. 4 as follows:

> This resolution was adopted without jurisdiction of the joint resolution of the Congress of the United States which had not been transmitted to and was not before the General Assembly, and in this resolution the words "on incomes" were left out of the resolution of the Congress, and if transmitted in this form would be void and would subject the Commonwealth to unpleasant comment and for these reasons and because a later resolution correcting the omission is reported to have passed both Houses, this resolution is returned to the House of Representative without my approval.[4]

---

[4] The later resolution referred to by the Governor, as shown above, was not passed by the Senate, the vote being 22 to 9 against

Mr. Klair moved that the consideration of the communication be postponed until 11 o'clock on the 15th.

(Exhibit FF, pp. 2-3).

80. Thereafter, on February 16, 1910, the House received a message from the Governor, transmitting the certified copy of the proposed Sixteenth Amendment sent to the Governor by Knox. The message of the Governor, including the certified copy of the proposed Sixteenth Amendment passed by Congress, was read at length and referred to the Committee on Federal and State Constitutional Amendments. (Exhibit BB, pp. 20-25). On February 17, 1910, the House took up H. Res. 4, together with the communication relative thereto from the Governor setting forth the Governor's objections.[5] On motion of Mr. Brooks, which was passed, further consideration was continued to February 18, 1910. (Exhibit BB, p. 26).

81. On February 18, 1910, Mr. Carter moved that the consideration of the communication from the Governor and H. Res. 4 be postponed until February 23. The motion was adopted. (Exhibit BB, p. 28).

82. On February 23, 1910, House Res. 20 was offered by Mr. Brooks. It read:

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ratification. See ¶ 76, *supra*. Furthermore, this version differed from the language proposed by Congress.

[5] The House Journal here makes reference to the House Journal dated Feb. 11th. (Exhibit BB, p. 26).

> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration.

By unanimous consent the rules were suspended and the resolution was taken up for consideration. The resolution was adopted. (Exhibit BB, pp. 30-32).

83. On February 24, 1910, the Senate received a message from the House that it had adopted House Res. 20. It was read the first time. Mr. Eaton moved that the rules of the Senate be suspended and that the Senate take up for consideration House Res. 20. The question being taken thereon it was decided in the negative. (Exhibit BB, p. 51).

84. On March 15, 1910, Mr. Thomas moved the rules be suspended and that the Senate take up H. Res. 20. The question was taken on the motion to consider H. Res. 20, which motion, which was decided in the negative. Mr. Oliver moved to reconsider the vote by which the Senate had disagreed to the motion and moved to lay the motion on the table. The question being taken thereon was decided in the affirmative. (Exhibit BB, pp. 52-53).

85. There is no record in the National Archives of a certificate of ratification being sent to Knox. The National Archives do, however, contain extracts of the House and Senate Journals to which editorial comments were added. (Exhibit A, pp. 65-83). These journals show Knox was aware that the two houses of the Kentucky legislature passed different versions of H. Res. 4. After the mistake was found by the

Governor, the House passed a corrected version of H. Res. 4, which corrected version differed from the proposed amendment passed by Congress, but the Senate voted against passage by a vote of 22 to 9. Another version of the proposed 16th amendment was introduced in the House as H. Res. 20, but was not passed by the Senate.

South Dakota:

86. On Saturday, January 7, 1911, Senate Joint Res. No. 5 was introduced in the Senate, read the first time, and referred to Committee on Federal Relations. (Exhibit CC, p. 29). On January 16, 1911, the Committee on Federal Relations returned the resolution with a recommendation that it pass. (Exhibit CC, p. 31). It was then read a second time. (Exhibit CC, p. 32.). On January 17, 1911, Senate Joint Res. No. 5 was read a third time, and on the question whether the resolution should pass, the vote was 41 yeas, with 4 absent. The President of the Senate declared the resolution had passed, and the title was agreed to, having been put to question. (Exhibit CC, p. 34).

87. On January, 17, 1911, Senate Joint Res. No. 5 was read the first time in the House. (Exhibit DD, p. 31). The same day the House received a message from the Senate transmitting Senate Joint Res. No. 5. (Exhibit DD, p. 32). On January 18, 1911, the resolution was read a second time and referred to the Committee on Federal Relations. (Exhibit DD, p. 34). On January 31, 1911, the Committee on Federal Relations returned Senate Joint Res. No. 5 and recommended that it pass. (Exhibit DD, p. 36).

88. On February 1, 1911, Senate Joint Res. No. 5 was read a third time, put to question, and passed. The vote was 100 yeas, absent and not voting 3, and excused, 1. The Speaker declared the resolution passed, the title was put to question, and the title was agreed. (Exhibit DD, pp. 38-39).

89. On February 2, 1911, the Senate received a message from the House that it had passed Senate Joint Res. No. 5 without change. (Exhibit CC, p. 36).

90. On February 3, 1911, the Senate Committee on Engrossed and Enrolled Bills reported Senate Joint Res. No. 5 was correctly enrolled. (Exhibit CC, p. 38). The President of the Senate then read the title of Senate Joint Res. No. 5, and signed it in open session. It was then delivered to the Secretary of State. (Exhibit CC, p. 39). In the House, the same day, the Committee on Engrossed and Enrolled Bills reported it found Senate Joint Res. No. 5 correctly enrolled. The Speaker read the title and signed the resolution in open session. (Exhibit DD, pp. 40-41). It was then delivered to the Secretary of State that day. (Exhibit DD, p. 42).

91. Although the Senate and House Journals of the State of South Dakota reports that Senate Joint Res. 5 was read in both houses of South Dakota's legislature, the precise language of S.J.Res. 5 is not reported in either journal. A copy of Senate Joint Resolution No. 5 is on file with the Secretary of State. (Exhibit EE.) The certificate of ratification sent to the United States Department of State read exactly as the copy on file with South Dakota's Secretary of State. The South Dakota legislature ratified the following:

> Article XVI: Congress shall have power to lay and collect taxes on Incomes from whatever Source derived without Apportionment among the several States and without regard to any Census or Enumeration.

(Exhibit A, pp. 84-86).

92. The word "The" was omitted before the word "Congress"; the word "incomes" was changed to "Incomes"; the "," was omitted after the word "incomes"; the word "source" was changed to "Source"; the "," was omitted after the word "derived"; the word "apportionment" was changed to the word "Apportionment"; the "," was omitted after the word "States"; the word "census" was changed to the word "Census"; and the word "enumeration" was changed to the word "Enumeration".

I declare under the penalties of perjury that the foregoing is true and correct.

Executed January 23, 2009 at Fox Point, Wisconsin.

/s/ Jeffrey A. Dickstein
JEFFREY A. DICKSTEIN

Doc 306

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:08-cr-79

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
Claudia Constance Hirmer, et al.,	)
Defendants.	)
	)

DEFENDANTS MARK AND CLAUDIA HIRMER'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COUNTS 1 AND 3 OF THE INDICTMENT (SIXTEENTH AMENDMENT NOT RATIFIED)

Come now Defendants Claudia Hirmer and Mark Hirmer (hereinafter "Hirmers"), who submit the following memorandum in support of their motion for an order dismissing Counts 1 and 3 of the indictment on the grounds that the provisions of the Internal Revenue Code pertaining to the federal income tax are unconstitutional as imposing a direct tax that is not apportioned as required by U.S. CONST.. art. I, § 2, cl. 3 and U.S. CONST. art I, § 9, cl. 4 in that U.S. CONST. amend XVI was not in law, or fact, ratified by

three-fourths of the forty-eight States as required by U.S. CONST. art V.

PRIOR CASE LAW.

The following Courts of Appeals have considered the Sixteenth Amendment issue: *United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236 (7th Cir. 1988); *Lysiak v. C.I.R.*, 816 F;2d 311 (7th Cir. 1987); *United States v. Sitka*, 845 F.2d 43 (2nd. Cir. 1988), *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); and *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991.)

In *Thomas*, the Court stated:

> Thomas is a tax protester, and one of his arguments is that he did not need to file tax returns because the sixteenth amendment is not part of the constitution. It was not properly ratified, Thomas insists, repeating the argument of W. Benson & M. Beckman, *The Law That Never Was* (1985). Benson and Beckman review the documents concerning the states' ratification of the sixteenth amendment and conclude that only four states ratified the sixteenth amendment; they insist that the official promulgation of that amendment by Secretary of State Knox in 1913 is therefore void.
>
> Benson and Beckman did not discover anything; they rediscovered something that Secretary Knox considered in 1913. Thirty-eight states

ratified the sixteenth amendment, and thirty-seven sent formal instruments of ratification to the Secretary of State. (Minnesota notified the Secretary orally, and additional states ratified later; we consider only those Secretary Knox considered.) Only four instruments repeat the language of the sixteenth amendment exactly as Congress approved it. The others contain errors of diction, capitalization, punctuation, and spelling. The text Congress transmitted to the states was: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." Many of the instruments neglected to capitalize "States," and some capitalized other words instead. The instrument from Illinois had "remuneration" in place of "enumeration"; the instrument from Missouri substituted "levy" for "lay"; the instrument from Washington had "income" not "incomes"; others made similar blunders.

Thomas insists that because the states did not approve exactly the same text, the amendment did not go into effect. Secretary Knox considered this argument. The Solicitor of the Department of State drew up a list of the errors in the instruments and--taking into account both the triviality of the deviations and the treatment of earlier amendments that had experienced more substantial problems--advised the Secretary that he was authorized to declare the amendment adopted. The Secretary did so.

> Although Thomas urges us to take the view of several state courts that only agreement on the literal text may make a legal document effective, the Supreme Court follows the "enrolled bill rule." If a legislative document is authenticated in regular form by the appropriate officials, the court treats that document as properly adopted. *Field v. Clark*, 143 U.S. 649, 12 S.Ct. 495, 36 L.Ed. 294 (1892). The principle is equally applicable to constitutional amendments. *See Leser v. Garnett*, 258 U.S. 130, 42 S.Ct. 217, 66 L.Ed. 505 (1922), which treats as conclusive the declaration of the Secretary of State that the nineteenth amendment had been adopted. In *United States v. Foster*, 789 F.2d 457, 462-63 & n. 6 (7th Cir. 1986), we relied on *Leser*, as well as on the inconsequential nature of the objections in the face of the 73-year acceptance of the effectiveness of the sixteenth amendment, to reject a claim similar to Thomas's. *See also Coleman v. Miller*, 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (1939) (questions about ratification of amendments may be nonjusticiable). Secretary Knox declared that enough states had ratified the sixteenth amendment. The Secretary's decision is not transparently defective. We need not decide when, if ever, such a decision may be reviewed in order to know that Secretary Knox's decision is now beyond review.
>
> *Thomas*, 788 F.2d at 1253-54.

What emerges from the opinion is the following: 1) the Seventh Circuit addressed no issue other than

what Secretary Knox himself addressed; 2) that because the Supreme Court follows the "enrolled bill rule," the doctrine of nonjusticiable political questions prohibits a court from addressing the issue, and imposes a duty to accept Knox's proclamation that the Sixteenth Amendment was ratified; and 3) that Secretary Knox's decision is now beyond [court] review.

In *Foster*, the Seventh Circuit admits the issue of the ratification of the Sixteenth Amendment was poorly briefed and failed to provide sufficient information for the court to make a determination:

> Foster only gave this court the briefest of explanations, in his reply brief, as to why the amendment was improperly ratified. In his opening brief he incorporated by reference the brief filed by the defendant-appellant in *United States v. Ferguson*, No. 85-1688, currently pending before this court . . . Mr. Foster has merely cited to a brief in an unrelated case, prepared by a different attorney from his own–which itself does not explain why the Sixteenth Amendment is void beyond stating the conclusion that the required number of state legislatures never ratified the amendment and that then Secretary of State Philander C. Knox falsified the certification record. See Appellant's Brief, *United States v. Ferguson*, No. 85-1688, at 10.
>
> *Foster*, 789 F.2d at 462.

The Seventh Circuit noted that Foster made these claims in his reply brief:

> In his reply brief, Foster sets forth the following contentions: (1) that on February 25, 1913 Secretary Knox certified the Sixteenth Amendment as duly ratified, 36 states having tendered ratifying resolutions to the State Department; (2) that Knox knew that 11 states had adopted versions with different wording, 22 states had altered the amendment's punctuation, and one state (Kentucky) had actually rejected the proposed amendment; (3) that the Office of the Solicitor had informed Knox that "a legislature is not authorized to alter in any way the amendment proposed by Congress"; (4) that Knox therefore knew he was under a duty to instruct those 33 states that they must ratify a conforming version of the amendment. Appellant's Reply Brief at 10-12. Based on these contentions, Foster asserts that the ratification of the Sixteenth Amendment did not comply with Article V of the Constitution and that therefore the Sixteenth Amendment is unconstitutional.
>
> *Foster, id.*

The court first noted that since the Sixteenth Amendment has been in existence for 73 years, that fact is very persuasive on the question of validity. The Seventh Circuit then observed in a footnote that the validity of an amendment's ratification is a non-justiciable political question. Citing to *Leser v. Garnett*, 258 U.S. 130, 137, 42 S.Ct. 217, 66 L.Ed. 505 (1922), the Seventh Circuit wrote "official notice to the Secretary, duly authenticated, that they had done so [ratified the nineteenth amendment] was conclusive upon him, and, being certified to by his proclamation,

is conclusive upon the courts." *Foster*, 789 F.2d at 462-63.

At this point the rulings are clear: the courts that considered the issue believe they lack subject matter jurisdiction to hear the issue of whether a constitutional amendment has in fact been ratified by the required number of states because the issue is non-justiciable, but they are also bound by a conclusive presumption that the amendment in question has in fact been properly ratified.

Notwithstanding its determination that it lacked subject matter jurisdiction, in dicta the court stated:

> Thus, we would require, at this late hour, an exceptionally strong showing of unconstitutional ratification. Foster has not made such a showing. He has not asserted any authority, binding on this court or for that matter on Secretary Knox in 1913, for his contention that a state's ratifying resolution may not have different punctuation or slightly different wording than Congress' version of an amendment. [FN7] He offers no support for his claim that any wording changes were not inadvertent but rather the product of "deliberate malfeasance." He has not shown that these slight variations affected the meaning of what the states acceded to in ratifying the amendment. "[He] has merely pointed to technical variances which may be of some historical interest but which have no substantive effect on the meaning of the Sixteenth Amendment." *United States v. House*, 617 F.Supp. 237, 238-39 (W.D.Mich.1985)

> (addressing precisely the same contentions on a complete record). He clearly has not carried the burden of showing that this 73-year-old amendment was unconstitutionally ratified.
>
> *Foster*, 789 F.2d at 463.

The dicta does not amount to anything more than a recognition that neither Appellant Foster nor the Seventh Circuit went behind the formal ratification documents any more than in *Thomas*.

In *Ferguson*, 793 F.2d and *Miller*, 868 F.2d, the Seventh Circuit added nothing to *Thomas* or *Foster*; it merely relied on *Thomas* and *Foster*. However, the Seventh Circuit in *Miller* stated it lacked legal authority to adjudicate the issue:

> We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed.2d 493 (1916), and those specifically rejecting the argument advanced in The Law That Never Was, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure. *See Foster*, 789 F.2d at 463 n. 6 (the propriety of the ratification of a constitutional amendment may be a non- justiciable political question). Determined and persistent tax protesters like Miller seek to utilize the federal judicial forum without consideration of the significant limitations on the authority of both the district courts and the courts of appeal. One

such limitation stems from the bedrock principle of *stare decisis*: lower courts are bound by the precedential authority of cases rendered by higher courts. *U.S. Ex Rel. Shore v. O'Leary*, 833 F.2d 663, 667 (7th Cir.1987). This limitation on judicial power is one of the cornerstones of the legal structure in that it serves broader societal interests such as the orderly and predictable application of legal rules. This doctrine prevents us from disregarding the Supreme Court's opinions upholding the constitutionality of the sixteenth amendment. The Court's decisions are binding on us and the district court absent strong evidence that the Court will overrule its own cases. *Colby v. J.C. Penney Co.*, 811 F.2d 1119, 1123 (7th Cir.1987). We perceive no signs that the Supreme Court is harboring any such intentions with regard to the validity of the sixteenth amendment.

Miller would have us disregard this principle and overturn almost three quarters of a century of settled law and declare the sixteenth amendment unconstitutional. He has asked us and the district court to do that which we have no authority to do. He would have us substitute one brand of lawlessness (from his perspective) with a form of lawlessness of our own. Miller and his fellow protesters would be well advised to take their objections to the federal income tax structure to a more appropriate forum.

Miller, 868 F.2d at 241.

In Benson, the Seventh Circuit stated:

Benson argues that he did not need to file tax returns or pay income taxes because the Sixteenth Amendment was not properly ratified. (Although this is a typical "tax protester" argument, see, e.g., United States v. Thomas, 788 F.2d 1250, 1253 (7th Cir.1986), Benson's failure to file returns had nothing to do with any general tax protest, and this case is not a tax protester case.) The district court denied Benson's request for an evidentiary hearing on this issue and refused to hear any Sixteenth Amendment argument. (Emphasis added.)

As the district court noted, we have repeatedly rejected the claim that the Sixteenth Amendment was improperly ratified. *See, e.g., United States v. Foster*, 789 F.2d 457, 461-63 (7th Cir.1986); *Thomas*, 788 F.2d at 1253; *United States v. Ferguson*, 793 F.2d 828, 831 (7th Cir.1986); *Lysiak v. C.I.R.*, 816 F.2d 311, 312 (7th Cir.1987) (per curiam). *Accord United States v. Sitka*, 845 F.2d 43 (2d Cir.1988); *United States v. Stahl*, 792 F.2d 1438 (9th Cir.1986). One would think this repeated rejection of Benson's Sixteenth Amendment argument would put the matter to rest. But Benson seizes on language in *Foster* in which, after rejecting the Sixteenth Amendment argument, we stated that "an exceptionally strong showing of unconstitutional ratification" would be necessary to show that the Sixteenth Amendment was not properly ratified. 789 F.2d at 463. Benson is the co-author of The Law That Never Was, a book that purports to "review the documents concerning the states' ratification of

the Sixteenth Amendment" and to show "that only four states ratified the Sixteenth Amendment [and that] the official promulgation of the amendment by Secretary of State Knox in 1913 is therefore void." *Thomas*, 788 F.2d at 1253. Benson insists that as the co-author of The Law That Never Was, and the man who actually reviewed the state documents "proving" improper ratification, he is uniquely qualified to make the "exceptionally strong showing" we spoke of in *Foster*. Because of this, Benson insists, the district court should have at least granted him an evidentiary hearing on the Sixteenth Amendment issue.

Benson is wrong. In *Thomas*, we specifically examined the arguments made in The Law That Never Was, and concluded that "Benson ... did not discover anything." We concluded that Secretary Knox's declaration that sufficient states had ratified the Sixteenth Amendment was conclusive, and that "Secretary Knox's decision is now beyond review." See 788 F.2d at 1254. It necessarily follows that the district court correctly refused to hold an evidentiary hearing; no hearing is necessary to consider an issue that is "beyond review."

> *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991).

The Seventh Circuit's opinion, unfortunately, fails to address certain facts. In *Thomas* the Court did not specifically examine **all** the arguments made in The Law That Never Was; the Court admittedly looked only at what Secretary Knox looked at, the formal

notices of ratification received. The Law That Never Was goes much further. For example, when one examines the attempted ratification by Missouri, Washington and Oklahoma, one sees that the legislatures **INTENTIONALLY** amended the proposed Sixteenth Amendment. Knox, and the Seventh Circuit, each presumed that no state had done so. Knox, and the Seventh Circuit, were both wrong. The issue that several states intentionally amended the language proposed by Congress has never been addressed by any Court.[1]

The reason for the courts' erroneous conclusion that it lacks authority to hear the issue is the enrolled bill rule announced by the United States Supreme Court in three cases: *Field v. Clark*, 143 U.S. 649 (1892); *Leser v. Garnett*, 258 U.S. 130 (1922); and *Coleman v. Miller*, 307 U.S. 433 (1939). The courts misapplied these cases, in doing so violated the doctrine of stare decisis, and ignored the holding of *Marbury v. Madison*, 5 U.S. 137 (1803) and *United States v. Balin*, 144 U.S. 1 (1892).

COURTS HAVE AN AFFIRMATIVE DUTY TO REVIEW THE ADMINISTRATIVE ACTS OF EXECUTIVE OFFICERS TO INSURE THEIR CONDUCT DOES NOT VIOLATE CONSTITUTIONAL MANDATES.

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[1] The issue is currently before the Seventh Circuit in *United States v. Benson*, Case No. 08-1312 (7th Cir. 2008). Oral argument was heard October 28, 2008. The Seventh Circuit has not yet issued its opinion.

The seminal case establishing administrative acts of an Executive Department official may be reviewed, and the duty of the courts to review such acts to ensure conformity with the Constitution, is *Marbury v. Madison*. That case delineates that the duties of a Secretary of State are of two kinds, and he exercises his functions in two distinct capacities; as a public ministerial officer of the United States, and as agent of the President. In the first his duty is to the United States or its citizens; in the other his duty is to the President; in the one he is an independent, and an accountable officer; in the other he is dependent upon the President, is his agent, and accountable to him alone. In the former capacity he is compellable by mandamus to do his duty, such as complying with the dictates of Revised Statute 205. *Marbury v. Madison* establishes the courts have not only the jurisdiction to review such public ministerial acts, but an absolute to insure the Constitution was not violated in the performance of such ministerial acts:

> This brings us to the second inquiry; which is,
>
> If he has a right, and that right has been violated, do the laws of this country afford him a remedy?
>
> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

...

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

...

It follows then that the question, whether the legality of an act of the head of a department be examinable in a court of justice or not, must always depend on the nature of that act.

If some acts be examinable, and others not, there must be some rule of law to guide the court in the exercise of its jurisdiction.

In some instances there may be difficulty in applying the rule to particular cases; but there cannot, it is believed, be much difficulty in laying down the rule.

By the constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In such cases, their acts are his acts; and whatever opinion may be entertained of the

manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the act of congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a

right to resort to the laws of his country for a remedy.

...

1st. With respect to the officer to whom it would be directed. The intimate political relation, subsisting between the president of the United States and the heads of departments, necessarily renders any legal investigation of the acts of one of those high officers peculiarly irksome, as well as delicate; and excites some hesitation with respect to the propriety of entering into such investigation. Impressions are often received without much reflection or examination, and it is not wonderful that in such a case as this, the assertion, by an individual, of his legal claims in a court of justice; to which claims it is the duty of that court to attend; should at first view be considered by some, as an attempt to intrude into the cabinet, and to intermeddle with the prerogatives of the executive.

It is scarcely necessary for the court to disclaim all pretensions to such a jurisdiction. An extravagance, so absurd and excessive, could not have been entertained for a moment. The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion. Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.

But, if this be not such a question; if so far from being an intrusion into the secrets of the cabinet, it respects a paper, which, according to law, is upon record, and to a copy of which the law gives a right, on the payment of ten cents; if it be no intermeddling with a subject, over which the executive can be considered as having exercised any control; what is there in the exalted station of the officer, which shall bar a citizen from asserting, in a court of justice, his legal rights, or shall forbid a court to listen to the claim; or to issue a mandamus, directing the performance of a duty, not depending on executive discretion, but on particular acts of congress and the general principles of law?

If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?

It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined. Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will;

it is again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation.

But where he is the head of a good department is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which, the President cannot lawfully forbid, and therefore is never presumed to have forbidden; as for example, to record a commission, or a patent for land, which has received all the legal solemnities; or to give a copy of such record; in such cases, it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment, that right be done to an injured individual, than if the same services were to be performed by a person not the head of a department.

This opinion seems not now, for the first time, to be taken up in this country.

...

It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

...

The question, whether an act, repugnant to the constitution, can become the law of the land, is

a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority, from which they proceed, is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers,

is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited*177 and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not

therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed as pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions-a written constitution-would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any state." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the judges to close their eyes on the constitution, and only see the law.

The constitution declares that "no bill of attainder or ex post facto law shall be passed."

If, however, such a bill should be passed and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of

two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution*180 contemplated that instrument, as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support?

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words, "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and

understanding, agreeably to the constitution, and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

Marbury, 5 U.S. at 162-180.

THE ENROLLED BILL RULE, THE POLITICAL QUESTION DOCTRINE, AND STARE DECISIS.

The act of reviewing the legislative action of the several states and issuing a certificate, the duty

imposed upon the Secretary of State by Revised Statute 205, does not constitute an enrolled bill nor fall within the scope of non-reviewable political action. Neither *Field v. Clark*, *Leser v. Garnett*, nor *Coleman v. Miller*, stands for the proposition that the federal judiciary is precluded from stopping a violation of the Constitution of the United States.

The holding in *Field* was that when a duly-enrolled bill, signed by the speaker of the house of representatives, the president of the senate, and the president of the United States, is placed in the custody of the secretary of state, its authentication as a law of the United States is complete, and no reference can be had to the journal of either house, to the reports of committees, or to any other documents printed by authority of congress, **for the purpose of showing that a section of the bill, as it finally passed, does not appear in the act as thus authenticated**. *Field*, 143 U.S. at 672-73 (emphasis added). The Supreme Court went out of its way to make clear its holding was limited to that situation, not to whether a sufficient number of votes had been cast for passage of the law:

> The argument, in behalf of the appellants, is that a bill, signed by the speaker of the house of representatives and by the president of the senate, presented to and approved by the president of the United States, and delivered by the latter to the secretary of state, as **an act passed by congress, does not become a law of the United Stats if it had not in fact been passed by congress. In view of the express requirements of the Constitution,**

> **the correctness of this general principle cannot be doubted.**
>
> *Field*, 143 U.S. at 669 (emphasis added).

The *Leser* court cited to *Field* with respect to the contention that "[t]he ratifying resolutions of Tennessee and of West Virginia are inoperative, **because adopted in violation of the rules of legislative procedure prevailing in the respective states**." *Leser*, 258 U.S. at 137. The Supreme Court held that since the States have the power to ratify, their having done so cannot be challenged. Whether or not any state intentionally amended the language of the proposed Nineteenth Amendment was not before the Supreme Court in *Leser*.

In *Coleman*, what was decided to be a political question, and therefore non-justiciable, was whether, when the legislature of the State has actually ratified the proposed amendment, the Court should restrain the state officers from certifying the ratification to the Secretary of State, because of an earlier rejection. *Coleman*, 307 U.S. at 137.

None of these cases hold that a ministerial act of an Executive Department official somehow obtains the status of an enrolled bill that cannot be reviewed. In *United States v. Ballin*, 144 U.S. 1 (1892), decided the same day as *Field*, **the Supreme Court consulted the legislative journal** of the House of Representatives **to determine if the act of May 9, 1890, was legally passed by a sufficient number of votes, despite the fact that the enrolled bill was found in the Office of the Secretary of State,**

authenticated and approved in the customary and legal form. The *Ballin* decision establishes the holdings of *Field*, *Leser* and *Coleman* were improperly applied when the contention is that the several States intentionally changed the language of the proposed Sixteenth Amendment.

> The doctrine of stare decisis is applicable only for cases directly on point with issues raised herein. Doubtless the doctrine of stare decisis is a salutary one, and to be adhered to on all proper occasions, but it only arises in respect of decisions directly upon the points in issue.
>
> The language of Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat 264, 399, may profitably again be quoted: 'It is maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not control the judgment in a subsequent suit when the very point is presented for decision. The reason of the maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.'
>
> *Pollock v. Farmer's Loan & Trust Company*, 157 U.S. 429, 574 (1895).

THE ENROLLED BILL RULE, THE SIXTEENTH AMENDMENT, AND KNOX.

No one questions that Congress intended to remove the requirement of apportionment to the direct tax on incomes derived from any source. Senate Joint Resolution 40, which was signed by the Speaker of the House of Representatives, the Vice-President of the United States and President of the Senate, and attested by the Chief Clerk and the Secretary of the House of Representatives, which was then delivered to Secretary of State Knox and certified by him, renders the language proposed by Congress to not be assailable by virtue of the enrolled bill rule announced in *Field v. Clark*. The political question doctrine prohibits the federal courts from deciding whether Congress should have proposed the Sixteenth Amendment because a judge doesn't like what Congress proposed.

These same principles apply to the certified and attested joint resolutions received by Knox from the various states. Those documents show precisely what each state intended to ratify through, in all cases, a very deliberate process. Knox, however, not liking the results of the deliberate legislative action of the various states, decided not to be bound by the enrolled bill rule, but to look behind the enrolled resolutions. Had Knox followed the enrolled bill rule, he could not declare in his certificate that the proposed Sixteenth Amendment had been adopted "according to the provisions of the Constitution." Rather than rely on the enrolled bill rule, Knox chose to rely on presumptions that members of the states' legislative bodies did not intend to cross out words passed by Congress and replace them with words of their own choosing, despite the unassailable evidence to the

contrary. The basis of Knox's presumption was the acknowledgment by Knox and his Solicitor, that the States have no authority, right or power to cross out the words passed by Congress and replace them with words of their own choosing. In other words, Knox presumed the States did not do precisely what not only the enrolled bill rule, but the legislative journals, show they did do.

CONCLUSION.

The United States Constitution, the supreme law of the land, limits what the federal government is allowed to do. One of the things the federal government is not allowed to do is to directly tax its citizens without representation. Another thing the federal government is not allowed to do is to change the limits of its powers by presumptions, especially false presumptions, as opposed to the will of the people through the amendment process. Another thing the federal government is not allowed to do is to throw American citizens in prison for supposedly violating a law, when in truth and fact such law does not exist.

Contrary to the prosecution's assertion, it is not "anti-government" to demand federal employees obey the law. Contrary to the assertion of some courts, American citizens cannot be jailed based on an irrebuttable presumption that a law is constitutional. Putting people in prison based on irrebuttable presumptions violates due process. *See Sandstrom v. Montana*, 442 U.S. 510, 521-523 (1979); *Stanley v. Illinois*, 405 U.S. 645, 654-657 (1972); *Heiner v. Donnan*, 285 U.S. 312, 325-29 (1932); *Schlesinger v. State of Wisconsin*, 270 U.S. 230 (1926); *Tot v. United States*, 319 U.S. 463, 468-69 (1943) ("But the due

process clauses of the Fifth and Fourteenth Amendments set limits upon the power of Congress or that of a state legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated"); *Vlandis v. Kline*, 412 U.S. 441, 446 (1973) ("Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments"); *United States v. Bowen*, 414 F.2d 1268, 1273 (3rd Cir. 1969) ("We believe the regulation to be unconstitutional as violative of the due process clause of the Fifth Amendment insofar as it purports to establish such an irrebuttable presumption . . . No administrative agency, nor even a legislature, may make the proof of one fact conclusive proof of another fact in any proceeding, civil or criminal, to the detriment of a private party"); *United States v. Simmons*, 476 F.2d 33, 37 (9th Cir. 1973); *United States v. Perry*, 474 F.2d 983, 984 (10th Cir. 1973); *United States v. Lake*, 482 F.2d 146 (9th Cir. 1973); and *United States v. Belgrave*, 484 F.2d 915 (3rd Cir. 1973).

There is no exception in tax cases that prohibit the federal courts from determining whether the taxing statutes violate the provisions of the federal constitution. The facts presented by the Hirmers establish a legitimate claim that less than the required number of states voted to ratify the proposed Sixteenth Amendment.

WHEREFORE, the Hirmers move this Court for an order dismissing counts 1 and 3 of the indictment.

Dated: January 24, 2009.

/s/ Jeffrey A. Dickstein
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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record, and e-mailed a copy to Defendant pro se, Arnold Ray Manansala, at arnie4444@gmail.com.

/s/ Jeffrey A. Dickstein

Doc 303

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:08-cr-79

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
Claudia Constance Hirmer, et al.,	)
	)
Defendants.	)
	)

DEFENDANTS CLAUDIA AND MARK HIRMER'S REQUEST FOR JUDICIAL NOTICE OF PUBLIC RECORDS

Come now Defendants Claudia Hirmer and Mark Hirmer (hereinafter "Hirmers"), by and through their undersigned attorney, who request the Court take judicial notice of the following certified public records, copies of which are attached hereto as Exhibits A-FF. This request is pursuant to F. R. EVID. 201(d) mandating a court take judicial notice if requested by a party and supplied with the necessary information, Rule 803 excepting said public documents from the rule as to hearsay, and Rule 902 providing that the certified public records are self-authenticating. The original certified public records are in the possession of attorney Jeffrey A. Dickstein, except for Exhibits M

and FF. The Declaration of William J. Benson, attached hereto as Exhibit GG, attests that the copies of those documents, attached hereto as Exhibits M and FF, are true and correct copies of the originals that he obtained from the Tennessee and Kentucky State archives.

Due to file size limitations with the electronic filing system, some exhibits only contain extracts of the pages to be used rather than all of the pages Benson obtained from the National and State's archives.

Exhibit A	Documents on file with the United States General Services Administration, National Archives and Records Service, Washington, D.C., pertaining to the Sixteenth Amendment.
Exhibit B	JOURNAL OF THE SENATE, FORTY-SIXTH GENERAL ASSEMBLY, STATE OF MISSOURI (1911).
Exhibit C	JOURNAL OF THE HOUSE OF REPRESENTATIVES, FORTY-SIXTH GENERAL ASSEMBLY, STATE OF MISSOURI (1911).
Exhibit D	S.J. Con. Res. 8, 46th General Assembly, State of Missouri (1911).
Exhibit E	SENATE JOURNAL, TWELFTH LEGISLATURE, STATE OF WASHINGTON (1911).

Exhibit F	HOUSE JOURNAL, TWELFTH LEGISLATURE, STATE OF WASHINGTON (1911).
Exhibit G	S.J. Res. 1, Twelfth Legislature, State of Washington (1911).
Exhibit H	JOURNAL OF THE HOUSE OF REPRESENTATIVES, EXTRAORDINARY SESS., 2ND LEGISLATURE, STATE OF OKLAHOMA (1910).
Exhibit I	JOURNAL OF THE HOUSE OF REPRESENTATIVES, EXTRAORDINARY SESS., 2ND LEGISLATURE, STATE OF OKLAHOMA, pp. 456, 457, 458 and 462 (1910).
Exhibit J	JOURNAL OF THE SENATE, EXTRAORDINARY SESS., 2ND LEGISLATURE, STATE OF OKLAHOMA (1910).
Exhibit K	H.J. Res. 5 Extraordinary Sess., 2nd Legislature, State of Oklahoma (1910).
Exhibit L	SENATE JOURNAL, FIFTY-SEVENTH GENERAL ASSEMBLY, STATE OF TENNESSEE (1911).
Exhibit M	HOUSE JOURNAL, FIFTY-SEVENTH GENERAL ASSEMBLY, STATE OF TENNESSEE (1911).

Exhibit N	PUBLIC ACTS OF THE STATE OF TENNESSEE, FIFTY-SEVENTH GENERAL ASSEMBLY (1911).
Exhibit O	JOURNAL OF THE HOUSE, BIENNIAL SESS., STATE OF VERMONT (1910).
Exhibit P	JOURNAL OF THE HOUSE, BIENNIAL SESS., STATE OF VERMONT, p. 107 (1910).
Exhibit Q	JOURNAL OF THE SENATE, BIENNIAL SESS., STATE OF VERMONT (1910).
Exhibit R	JOURNAL OF THE HOUSE, BIENNIAL SESS., STATE OF VERMONT (1912).
Exhibit S	JOURNAL OF THE SENATE, BIENNIAL SESS., STATE OF VERMONT (1912).
Exhibit T	JOURNAL OF THE HOUSE OF DELEGATES, JANUARY SESS., STATE OF MARYLAND (1910.)
Exhibit U	JOURNAL OF THE SENATE, JANUARY SESS., STATE OF MARYLAND (1910).
Exhibit V	MARYLAND MANUAL, A COMPENDIUM OF LEGAL, HISTORICAL AND STATISTICAL INFORMATION RELATING TO THE STATE OF MARYLAND (1912-1913).
Exhibit W	SENATE JOURNAL, THIRTY-EIGHTH REGULAR SESS., STATE OF ARKANSAS (1911).

Exhibit X	JOURNAL OF THE HOUSE OF REPRESENTATIVES, THIRTY-EIGHTH REGULAR SESS., STATE OF ARKANSAS (1911).
Exhibit Y	JOURNAL OF THE SENATE, THIRTY-EIGHTH (EXTRA) SESS., STATE OF CALIFORNIA (1910).
Exhibit Z	JOURNAL OF THE ASSEMBLY, THIRTY-EIGHTH (EXTRA) SESS., STATE OF CALIFORNIA (1910).
Exhibit AA	S.J. Res. 2, Thirty-Eighth (Extra) Sess., State of California (1911).
Exhibit BB	H. Res. 4, Regular Sess., Commonwealth of Kentucky (1910); JOURNAL OF THE HOUSE OF REPRESENTATIVES, REGULAR SESS., COMMONWEALTH OF KENTUCKY (1910); JOURNAL OF THE SENATE, REGULAR SESS., COMMONWEALTH OF KENTUCKY (1910).
Exhibit CC	JOURNAL OF THE SENATE, TWELFTH SESS., STATE OF SOUTH DAKOTA (1911).
Exhibit DD, DD-1, DD-2	JOURNAL OF THE HOUSE, TWELFTH SESS., STATE OF SOUTH DAKOTA (1911).
Exhibit EE	S.J. Res. 5, Twelfth Sess., State of South Dakota (1911).

Exhibit FF	JOURNAL OF THE HOUSE OF REPRESENTATIVES, REGULAR SESS., COMMONWEALTH OF KENTUCKY PP. 440-43 (1910).

Dated: January 23, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record, and e-mailed a copy to Defendant pro se, Arnold Ray Manansala, at arnie4444@gmail.com.

/s/ Jeffrey A. Dickstein

Doc 333

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

CASE NO. 3:08-cr-79

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
Claudia Constance Hirmer, et al.,	)
Defendants.	)
	)

DEFENDANTS MARK AND CLAUDIA HIRMER'S MOTION AND MEMORANDUM IN SUPPORT OF DISMISSING THEM FROM COUNT 1 (FIRST AMENDMENT)

Come now Defendants Claudia Hirmer and Mark Hirmer (hereinafter "Hirmers"), who move the Court for an order dismissing them from Count 1 of the indictment on the grounds that application of 18 U.S.C. § 371 to the facts alleged in the indictment violates U.S. CONST. amend. I. In support thereof the following showing is made:

MOTION TO DISMISS

The United States makes no qualms that its new agenda is to silence all advocacy pertaining to the

federal income tax. On April 8, 2008, a mere four months before the filing of the indictment in this case, the Department of Justice issued its press release authored by Nathan J. Hochman, the Tax Division's Assistant Attorney General, announcing the creation of the "National Tax Defier Initiative," the first paragraph of which states:

> Today Nathan J. Hochman, Assistant Attorney General of the Justice Department's Tax Division, announced the creation of the National Tax Defier Initiative or TAXDEF. **The purpose of this initiative is to reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue and, where appropriate, prosecute those who take concrete action to defy and deny the fundamental validity of the tax laws.**
>
> http://www.usdoj.gov/opa/pr/2008/April/08_tax_275.html (emphasis added).

The indictment alleges:

> PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified and that no law required United States citizens to pay income taxes.
>
> Indictment (Doc. 3), p. 3, ¶ 6.

After the demise of Global, Claudia Hirmer, Mark Hirmer and others created PQI in order to continue to promote anti-government views...

> Indictment (Doc. 3), p. 7, ¶ 1.
>
> On or about October 15, 2003, Mark Hirmer sent an email to a potential PQI member promoting PQI's Q1 and Q2 products[1] and speakers who **ADVOCATE** anti-government and anti-tax agendas.
>
> Indictment (Doc. 3), p. 13, ¶ 24 (emphasis added).
>
> On or before April 14, 2004, Claudia Hirmer made a recorded telephone call for the benefit of PQI members, during which Claudia Hirmer encouraged members to buy two products sold by PQI Vendors, both of which promoted tax evasion by **ESPOUSING THE IDEA** that the IRS did not have the legal authority to tax income.
>
> Indictment (Doc. 3), p. 15, ¶ 30 (emphasis added).

In addition, there are numerous allegations that Claudia Hirmer, and sometimes Mark Hirmer, conducted conferences. *See* Indictment (Doc. 3), pp. 9-23, ¶¶ 12, 18, 25, 33, 35, 41, 52, 56, 58, 60, 64 and 65.

The United States also admitted that one of the reasons to seek imprisonment prior to conviction was

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[1] The United States will not deny PQI's Q1 is a set of audio CDs and the Q2 and Q3 products are tickets to attend an off-shore seminar where PQI "members" sit in an audience and listen to speech.

the fact that "[t]he defendant appeared to hold anti-government views as promoted by the PQI group as a whole." (Doc. 245, p. 2.)

As is more fully set forth in the memorandum in support of this motion, it is not a crime to hold beliefs that are anti-government, to espouse ideas, advocate, nor to peacefully assemble to discuss those ideas and beliefs through speech that does not incite imminent lawless conduct. Such conduct is a fundamental right of a free society forever enshrined by the First Amendment:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . .
>
> U.S. CONST. amend. I.

Assuming for the sake of argument the indictment alleges some criminal activity of some of the defendants, Count 1 of the indictment makes no allegation against the Hirmers that is not protected by the First Amendment. Where an indictment charges both legal and illegal conduct, the Court must dismiss those defendants who are engaged in only legal activity. *See United States v. Spock*, 416 F.2d 165 (1st Cir. 1969).

MEMORANDUM IN SUPPORT

Hammerschmidt v. United States, 265 U.S. 182 (1924) specifically held that an indictment charging that defendants conspired to impair, obstruct, and defeat a lawful function of the government, by attempting through printing, publishing, and

circulation of handbills, etc., to induce persons subject to registry under the Selective Service Act May 18, 1917, 50 U.S.C.A. foll. § 226, to refuse to register, did not charge the offense of conspiracy to defraud the United States. So too the conduct of the Hirmers to induce people to hear "anti-government" and "anti-tax" agendas does not charge either a conspiracy to defraud or a conspiracy to commit wire fraud.

The case of *United States v. Spock,* 416 F.2d, which included a vigorous dissent regarding the prohibition, under the First Amendment, to bring the case at all, sets forth specific parameters the Court must follow to insure the Hirmer's rights to disagree with the government is not abridged:

> Inseparable from the question of the sufficiency of the evidence to convict are the rights of the defendants, and others, under the First Amendment. We approach the constitutional problem on the assumption, which we will later support, that the ultimate objective of defendants' alleged agreement, viz., the expression of opposition to the war and the draft, was legal, but that the means or intermediate objectives encompassed both legal and illegal activity without any clear indication, initially, as to who intended what. This intertwining of legal and illegal aspects, the public setting of the agreement and its political purposes, and the loose confederation of possibly innocent and possibly guilty participants raise the most serious First Amendment problems.
>
> *Spock*, 416 F.2d at 169.

> Admittedly, the First Amendment rights of free speech and free association, *see, e.g., Elfbrandt v. Russell*, 1966, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321; *NAACP v. Alabama*, 1958, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488, are of such importance that they must prevail if the government's interest in deterring substantive crimes before they take place is insubstantial, **or there is a 'less restrictive alternative' by which the substantive evil may be prevented**. *United States v. Robel*, 1967, 389 U.S. 258, 265-268, 88 S.Ct. 419, 19 L.Ed.2d 508; *Aptheker v. Secretary of State*, 1964, 378 U.S. 500, 512-514, 84 S.Ct. 1659, 12 L.Ed.2d 992; *Shelton v. Tucker*, 1960, 364 U.S. 479, 488-489, 81 S.Ct. 247, 5 L.Ed.2d 231. This calls for a weighing. In *Aptheker* the Court struck down the broad Congressional proscription against issuing passports to Communists only after considering the availability and adequacy of other security measures, one actually proposed by the President.
>
> *Spock*, 416 F.2d at 170.

One such "less restrictive alternative," already utilized against several of the named defendants, is the civil injunction issued under 26 U.S.C. § 6700.

> In comparing the present private and public interests we start with the assumption that the defendants **were not to be prevented from vigorous criticism of the government's program** merely because the natural

consequences might be to interfere with it, or even to lead to unlawful action.

Spock, *id*. (emphasis added).

Despite the validity of the government's present interest, the defendants were entitled under the cases to certain protections before they could be convicted of conspiracy in what we might call a bifarious undertaking, involving both legal and illegal conduct. This matter was considered by Mr. Justice Harlan, speaking for the Court in *Scales v. United States*, 1961, 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed.2d 782. The question there was whether convicting 'active' members of the Communist party would interfere with the freedom of inactive, or legal, members. In the course of discussing this question he spoke of such groups as not being a 'technical conspiracy' because of their mixed motives, and recognized the impropriety of a 'blanket prohibition of association with a group having both legal and illegal aims.' It did not follow, however, that distinction could not be effected. Indeed, this is the substantive purpose of all conspiracy law, which is directed only at those who have intentionally agreed to further the illegal object. The First Amendment cases merely present a more difficult problem of insuring that the government does not use its procedural advantages to expand the strict elements of the offense.

In *Scales* the Court held that protection for the innocent could be adequately accomplished by requiring that the defendants' specific illegal

intent be proved to the degree demanded in *Noto v. United States*, 1961, 367 U.S. 290, 81 S.Ct. 1517, 6 L.Ed.2d 836. 'Criminal intent * * * must be judged *strictissimi juris,* for otherwise there is a danger that one in sympathy with the legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.' *Noto v. United States*, at 299-300, 81 S.Ct. at 1522. FN18

> FN18. The Court said in *Scales*, 367 U.S. at 229-230, 81 S.Ct. at 1486, 'Thus the member for whom the organization is a vehicle for the advancement of legitimate aims and policies does not fall within the ban of the statute: he lacks the requisite specific intent 'to bring about the overthrow of the government as speedily as circumstances would permit.' Such a person may be foolish, deluded, or perhaps merely optimistic, but he is not by this statute made a criminal.' *See also Elfbrandt v. Russell*, 384 U.S. at 15-17, 86 S.Ct. 1238.

Spock, 416 F.2d at 172-173.

Here the indictment does not allege any conduct on the part of the Hirmers from which specific illegal intent arises. Neither espousing ideas and engaging in advocacy, nor holding "anti-government" beliefs, constitutes a crime in the United States.

A special obligation exists as to federal statutes to construe them so to avoid unconstitutionality, *Scales v. United States, supra*, so long as such does not result in substantial re-writing. *See Aptheker v. Secretary of State*, 1964, 378 U.S. 500, 515-516, 84 S.Ct. 1659, 12 L.Ed.2d 992. The fact that a seemingly normal criminal statute, by virtue of its prohibition of conspiracy and crime counselling, may in some instances apply to affect freedom of association or freedom of speech does not invalidate the statute. *See United States v. O'Brien*, 1968, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672. **The court's obligation is, rather, to make sure that such a statute does not improperly infringe upon speech in any particular instance.** *See, e.g., Street v. New York*, U.S., April 21, 1969, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572.

> *Spock*, 416 F.2d at 174, n.20 (emphasis added).

The principle of *strictissimi juris* requires the acquittal of Spock. It is true that he was one of the drafters of the Call **[conductors of Q2 and Q3 conferences]**, but this does not evidence the necessary intent to adhere to its illegal aspects **[of counseling tax evasion]**. Nor does his admission to a government agent that he was willing to do 'anything' asked to further opposition to the war. Specific intent is not established by such a generalization. Whatever the reason the fact is that his speech was limited to condemnation of the war and the draft **[anti-government and anti-tax**

> **agendas]**, and lacked any words or content of counseling. The jury could not find proscribed advocacy from the mere fact, which he freely admitted, that he hoped the frequent stating of his views might give young men 'courage to take active steps in draft resistance.' This is a natural consequence of vigorous speech.
>
> Similarly, Spock's actions lacked the clear character necessary to imply specific intent under the First Amendment standard. He was not at the Arlington Street Church meeting; in fact he knew nothing of it until afterwards. Although he was at the Washington demonstration he had, unlike Goodman and Coffin, no part in its planning. He contributed nothing, even by his presence, to the turning in of cards. Nor, finally, did his statements in the course of the Washington demonstration extend at all beyond the general anti-war, anti-draft **[anti-government, anti-tax]** remarks he had made before. His attendance is as consistent with a desire to repeat this speech as it is to aid a violation of the act [tax laws].
>
> *Spock*, 416 F.2d at 178-179.

The indictment makes clear, as does the civil injunction case, *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008) that any and all conduct regarding non-filing of returns, use of corporate structures, etc., engaged in by any PQI customer arose from the PQI customer's subsequent purchase of materials from vendors. Furthermore, PQI, and according to the indictment, the Hirmers, specifically disclaimed the accuracy or reliability of any product

promoted by a vendor. PQI, and according to the indictment, the Hirmers, specifically encouraged its "members" to abide by all tax laws and to seek independent counsel prior to making any financial or tax decisions based on the presentation of the vendors. Defendant Hirmers previously asked the Court to take judicial notice of the civil injunction suit brought in this Court, and does so again. Documents filed in that case show purchasers of the Q1 audio CDs were required to sign a contract prior to receiving the CDs. A copy of the contract is at *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008), Doc. 36-3, and contains the following:

> 11. The Purchaser understands and agrees that it is the Purchaser's responsibility, and the Consultant recommends, that the Purchaser obtain Purchaser's own independent legal, accounting or other professional advice with respect to evaluating and/or implementing any of the material presented in the product.
>
> *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008), Doc. 36-3, p. 5, ¶ 11.
>
> 17. PQI, Inc. and SPI, Inc. encourages all participants to abide by the applicable laws of their respective countries, and to seek the guidance and counsel of a professional and licensed attorney, certified financial planners, and certified public accountants when making any financial decision. Participants are responsible for all applicable income taxes, capital gains taxes, or other applicable taxes or tax reporting obligations in their respective

> countries. PQI, Inc. and/or SPI, Inc. shall not be held liable or responsible for any negligence regarding tax evasion or other tax related responsibilities of any participant, in any country.
>
> *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008) Doc. 36-3, p. 5, ¶ 17.

Each attendee of a Q2 or Q3 conference was required to sign a Participant Agreement and Disclaimer in front of an approved witness as well as show a government issued photo ID. (*United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008), Doc. 53, p. 88). A copy of that document is found at *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008), Doc. 36-8. Among other disclaimers, PQI, and according to the indictment, the Hirmers, advise that:

> Certain statements or information presented were developed, or written by, or contain, or are based upon statements or information developed or written by third parties. All such statements or information is the property of the original publisher. PQI, Inc. and/or SPI, Inc. cannot provide verification of the accuracy of such information or statements and PQI, Inc. or SPI, Inc. does not guarantee the accuracy or completeness of such information or statements. All opinions offered are solely the opinions of the speakers/vendors/presenters and should in no way be construed as the opinions of PQI, Inc. or SPI, Inc. The statements made by PQI, Inc. and SPI, Inc. contain general information and do not constitute an offer to buy or sell any

security. All information and opinions expressed are subject to change without notice.

and

PROVIDERS OF THIRD-PARTY EDUCATION/PRODUCTS This Conference contains education and products from providers operated by parties other than PQI, Inc., and/or SPI, Inc, and other resources and advertisers. Such are provided for participant's reference and education only. PQI, Inc., and/or SPI, Inc provides educational contacts to selected companies for participants convenience only. Neither PQI, Inc., nor SPI, Inc., is a registered broker-dealer and does not endorse or recommend the services of any company or is responsible for any of the contents, advertising, products, or other materials of such provider. PQI, Inc., and/or SPI, Inc. inclusion of providers and educators does not imply any endorsement of the material on or any association with their company. Under no circumstances shall PQI, Inc., or SPI, Inc be held responsible or liable, directly or indirectly, for any loss or damage caused or alleged to have been caused in connection with the use of or reliance on any content, goods, or services available by such providers. Any concerns regarding any product or service should be directed to its respective owners or administrators. As with any product and/or investment, risk is always a factor. Therefore PQI, Inc. and/or SPI, Inc offer no representation, responsibility, or any guarantee to its performance, credibility, or accuracy. If you choose to invest with any of these offers, all

> dealings will be strictly between you and the representatives of the product and/or investment itself.
>
> *United States v. PQI, et al.*, Case No. 3:08-cv-136 (N.D.Fla. 2008), Doc. 36-8, pp. 1-2.

Applying a *strictissimi juris* standard to the allegations of Count 1 show the Hirmers speech and conduct are fully protected by the First Amendment and cannot be made criminal.

The First Amendment requires dismissal of a prosecution brought for the purpose of discouraging the lawful exercise of First Amendment rights.[2] Even if the conduct charged in an Indictment could be found unlawful, the Government cannot use the leverage of a criminal prosecution, even a prosecution that would otherwise be permissible, for the impermissible purpose of discouraging the lawful exercise of First Amendment rights. Whenever there is evidence, as here, that an impermissible desire to chill the exercise of First Amendment rights is a motivating factor in a criminal prosecution brought by the Government, the Government bears the burden of proving that it would have taken the same action even without the influence of the impermissible motive. This "but for" test requires a factual determination whether, in fact, the

---

[2] Although the validity of the case law holding the issue of whether the 16th Amendment was ratified is a political question is before the Seventh Circuit in *United States v. Benson*, Case No. 08-1312 (7th Cir. 2008), if it is a "political question," then speech regarding the issue is "political speech."

impermissible motive is a "but-for" cause of the prosecution.

Joining organizations that participate in public debate, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection. *See, e.g., Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 294-96 (1981); *Buckley v. Valeo*, 424 U.S. 1, 14-25 (1976); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 466 (1958).

In *Dombroski v. Pfister*, 380 U.S. 479, 487 (1965), the State of Louisiana charged leaders of a local civil rights movement with operating a subversive, Communist-front organization, named the Southern Conference Educational Fund, Inc. The defendants in the state criminal action sought an injunction in federal court against prosecution of those cases, and from denial of that requested injunction, the Supreme Court granted cert. The Court held that when a state criminal prosecution threatens First Amendment freedoms, a federal court could intervene and issue injunctions to protect First Amendment rights: "Moreover, we have not thought that the improbability of successful prosecution makes the case different. The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure."

In *Bantam-Books v. Sullivan*, 372 U.S. 58 (1963), which involved Rhode Island's obscene books banning law, the Rhode Island Commission to Encourage Morality in Youth could make recommendations about what books and other materials were considered by it to be obscene. Obeying the wishes of the Commission

was a sure way to avoid its wrath, and refusal could result in criminal prosecution. In holding that the Commission could be enjoined, the Court noted that "the freedoms of expression must be ringed about with adequate bulwarks" (*Id.* at 488), and the Commission's practice constituted a "scheme of state censorship". For this reason, the Court allowed potential criminal defendants to attack this scheme in federal court. This precedence from the Supreme Court has become the basis for subsequent decisional authorities allowing criminal defendants to assert First Amendment objections to threatened or actual criminal prosecutions.

Here, the United States' "National Tax Defier Initiative," and Count 1 of the indictment, constitutes a scheme of federal censorship, especially seeking to squelch all public debate as to whether the nation's tax laws are constitutional. The indictment clearly attempts to criminalize the belief and speech that the Sixteenth Amendment was not ratified: "PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was never ratified...." (Indictment, p. 3, ¶ 6).

Via *Bantam-Books* and *Dombroski, supra*, injunctive relief or dismissal of an indictment is warranted where the prosecution is clearly motivated by the improper purpose of interfering with a defendant's constitutionally protected, First Amendment rights. *Bantam*, 372 U.S. at 67; *Dombroski*, 380 U.S. at 490. The legal standard applicable for the "bad faith" claim under the *Bantam-Dombroski* test focuses solely on the

motivation of the Government. The "National Tax Defier Initiative" makes such motivation clear. Where, as here, the claim is that this prosecution was brought to suppress the constitutionally protected First Amendment right to engage is speech, the indictment must be dismissed.

In *United States v. PHE, Inc.*, 965 F.2d 848, 853 (10th Cir. 1992), a merchant of the pornography industry, PentHouse Enterprises, was indicted as the result of a DOJ project, "Project PostPorn," which was a multi-district effort to prosecute those in this industry despite the fact that much of the matters under investigation concerned materials protected by the First Amendment. PHE moved to dismiss the indictment returned against it, but the district court denied the motion. Asserting that it could appeal this collateral order, PHE pursued relief in the court of appeals, which stated:

> The overarching consideration that forms the backdrop of the district court proceedings is whether the foregoing facts activate the constitutional precept that a prosecution motivated by a desire to discourage expression protected by the First Amendment is barred and must be enjoined or dismissed, irrespective of whether the challenged action could possibly be found to be unlawful. *See Wayte v. United States*, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985) ('[T]he decision to prosecute may not be 'deliberately based upon an unjustifiable standard' . . . including the exercise of protected statutory and constitutional rights.)'

The Tenth Circuit reversed the district court's order and remanded for further proceedings. *See also Council for Periodical Distributors v. Evans*, 827 F.2d 1483 (11th Cir. 1987).

A "bad faith" prosecution is one instituted for the purpose of harassment or to deter the exercise of federally protected rights. The quantum of proof of guilt is irrelevant to the question of whether a defendant has been improperly singled out for prosecution because of his or her political beliefs or for other unjustifiable reasons. *PHE, Inc.*, 965 F.2d at 853. Furthermore, there is no need to prove that others similarly situated have not been prosecuted when a "bad faith" prosecution is at issue. A prosecution to "chill" First Amendment activity or to punish a defendant for her exercise of other constitutionally protected rights is unlawful regardless of whether it is selective.

A prosecution brought for the purpose of suppressing protected rights is unconstitutional even if there is probable cause to prosecute the precise conduct covered by the indictment. The fact that there may be probable cause to prosecute does not answer the question whether suppression of protected First Amendment rights is a desired goal of the prosecution, and that is the critical question for purposes of the First Amendment, bad faith inquiry. The case law requires dismissal of a bad faith indictment even if a conviction could be obtained. *See, e.g., Mt. Healthy City School Dist. v. Doyle*, 429 U.S. 274 (1977); *P.H.E., Inc., supra*; and *Saye v. St. Vrain Valley School Dist.*, 785 F.2d 862 (10th Cir. 1986).

Whenever there is evidence, as here, that an impermissible desire to deter lawful First Amendment activities is a motivating factor in a governmental decision, the Government bears the burden of proving that it would have taken the same action even without the influence of the impermissible motive. This "but for" test requires a factual determination whether, in fact, the impermissible motive is a but-for cause of the governmental action. *Mt. Healthy City School Dist.*, 429 U.S. and *Saye*, 785 F2d.

The Supreme Court and others have repeatedly ruled in analogous contexts that governmental actions can violate the First Amendment if the persons recommending those actions were motivated by a desire to discourage First Amendment rights, even if the persons who finally approved those recommendations were not impermissibly motivated.

> The causation issue in first amendment cases is purely factual: did retaliation for protected activity cause the termination in the sense that the termination would not have occurred in its absence? It is not necessary that the improper motive be the final link in the chain of causation: if an improper motive sets in motion the events that lead to termination that would not otherwise occur, 'intermediate step[s] in the chain of causation' do not necessarily defeat the plaintiff's claim.
>
> *Professional Ass'n of College Educators v. El Paso County Comm. Coll. Dist.*, 730 F.2d 258, 266 (5th Cir.), cert. denied, 469 U.S. 881 (1984).

The crucial issue is whether the subordinate's response to "protected activity" was a "but for" cause of the indictment. The same test has been applied in other Circuits as well. In *Cox v. Dardanelle Public School District*, 790 F.2d 668 (8th Cir. 1986), the Eighth Circuit held that government action violated the First Amendment even though the final decisionmaker did not have an impermissible motive, because the final decisionmaker "would not have considered an adverse action" absent the bad faith of those who recommended that action. *Cox*, 790 F.2d at 676.

Similarly, in *Haimowitz v. University of Nevada*, 579 F.2d 526 (9th Cir. 1978), the Ninth Circuit reversed a trial court's grant of summary judgment premised on the proposition that the bad faith "was alleged to have occurred at the advisory level only." *Haimowitz*, 579 F.2d at 527. The Haimowitz trial court had believed it did not have to resolve the factual question whether the final decisionmaker "would have reached the same result" in the absence of subordinates' impermissible motivations. *Id.* at 530. The Ninth Circuit ruled that it was error not to have resolved that factual question:

> The district court, and now the appellees, seek to avoid these genuine disputes by arguing that any retaliation was only at the advisory level. It is thought by the appellees that the improper bias is too far removed from the final decisionmaking to be of constitutional moment. Appellees have not cited any legal authority for their position. Rather, it appears that in cases where recommendations form the basis for the nonretention decision, this input is critical.

Haimowitz, 579 F.2d at 530 (*quoting Bertot v. School District No. 1*, 522 F.2d 1171, 1181 (10th Cir. 1975), and *Smith v. Losee*, 485 F.2d 334, 336-40 (10th Cir. 1973).

The courts may not permit vindictiveness to be hidden behind procedural cosmetics. The test must be pragmatic. *P.H.E., Inc., supra.*

CONCLUSION

The "National Tax Defier Initiative" and allegations of the indictment quoted above leave no doubt but that the Department of Justice, Tax Division, utilizing the concerted efforts of the IRS and Offices of the United States Attorneys, are involved in an impermissible scheme to censor, through civil injunctions and criminal prosecutions, any opposition to the federal income tax. Not only does the indictment fail to establish that the Hirmers were engaged in anything but protected First Amendment activity, it shows the prosecution against the Hirmers was motivated for daring to "espouse ideas" and "advocate" through the production and distribution of audio CDs and selling tickets where people peacefully assemble to hear speech, that the Sixteenth Amendment was not ratified, an issue the courts have declared is a "political question."

The very essence of First Amendment protected freedom is the right not only to disagree with the government, but to publicly express that disagreement for the express purpose of convincing others that the government is wrong:

Freedom of speech is "indispensable to the discovery and spread of political truth," *Whitney v. California*, 274 U.S. 357, 375, 47 S.Ct. 641, 648, 71 L.Ed.1095 (1927) (Brandeis, J., concurring), and "the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ." *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). The First and Fourteenth Amendments remove "governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity . . . ." *Cohen v. California*, 403 U.S. 15, 24, 91 S.Ct. 1780, 1786, 29 L.Ed.2d 284 (1971). This Court has emphasized that the First Amendment "embraces at the least the liberty to discuss publicly and truthfully all matters of public concern . . . ." *Thornhill v. Alabama*, 310 U.S. 88, 101-102, 60 S.Ct. 736, 744, 84 L.Ed. 1093 (1940); *see Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1436, 16 L.Ed.2d 484 (1966).

....

The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its

content." *Police Department of Chicago v. Mosley, supra*, at 95, 92 S.Ct., at 2290; see Cox v. Louisiana, 379 U.S. 536, 580-581, 85 S.Ct. 466, 469-470, 13 L.Ed.2d 487 (1965) (opinion of Black, J.) . . . If the marketplace of ideas is to remain free and open, governments must not be allowed to choose "which issues are worth discussing or debating . . . ." 408 U.S., at 96, 92 S.Ct., at 2290. *See also Erznoznik v. City of Jacksonville, supra*, 422 U.S., at 214-215, 95 S.Ct., at 2275; *Tinker v. Des Moines School District*, 393 U.S. 503, 510-511, 89 S.Ct. 733, 738-739, 21 L.Ed.2d 731 (1969). To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.

> *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530, 534-38 (1980).

The First Amendment categorically demands that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.' The right of a man to think what he pleases, to write what he thinks, and to have his thoughts made available for others to hear or read has an engaging ring of universality.

> *Dennis v. United States*, 341 U.S. 494, 520-21 (1951)(Frankfurter, J., concurring).

The United States is here using 18 U.S.C. § 371 to squelch the entire viewpoint that there are serious problems with the federal tax laws, including that the Sixteenth Amendment was not ratified in accordance with the requirement of Article V.

WHEREFORE, Defendant Hirmers move the Court for an order dismissing them from Count 1 of the indictment on the grounds that application of 18 U.S.C. § 371 to the facts alleged in the indictment violates U.S. CONST. amend. I.

Dated: February 1, 2009.

/s/ Jeffrey A. Dickstein
Jeffrey A. Dickstein
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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record, and e-mailed a copy to Defendant pro se, Arnold Ray Manansala, at arnie4444@gmail.com.

/s/ Jeffrey A. Dickstein

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF FLORIDA
PENSACOLA DIVISION

No. 3:08cr79/MCR

Returned in open court pursuant to Rule 6(f)
8-21-08
Date

/s/
United States Magistrate Judge

UNITED STATES OF AMERICA	)
	)
v.	)
	)
CLAUDIA CONSTANCE HIRMER,	)
MARK STEVEN HIRMER,	)
EUGENE JOSEPH CASTERNOVIA,	)
a/k/a "Gino,"	)
ROBERT LEIGHTON PENDELL,	)
MARK BARRY LYON,	)
ELLEN MEREDITH STUBENHAUS,	)
a/k/a "Dr. Ellen,"	)
JOSEPH WILLIAM McPHILLIPS,	)
ARNOLD RAY MANANSALA,	)
DOVER EUGENE PERRY,	)
MICHAEL GUY LEONARD,	)
MARK DANIEL LEITNER,	)

ARTHUR RAMIREZ MERINO)
and)
JEFFRY JEAN JENKS)
_____)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

A. INTRODUCTION

At all times relevant to this Indictment:

1. Pinnacle Quest International, also known as "PQI" or "Quest," was a Panamanian business entity headquartered in Fort Walton Beach, Florida, and controlled by **CLAUDIA CONSTANCE HIRMER and MARK STEVEN HIRMER (hereinafter "CLAUDIA HIRMER" and "MARK HIRMER," or "the HIRMERS").**

2. PQI was the successor entity to the Institute for Global Prosperity, also known as "IGP" or "Global," which ceased operations in approximately May 2002 after several states issued "Cease and Desist" orders against Global and U.S. law enforcement began a criminal investigation into Global and its founders, including David Struckman. **CLAUDIA HIRMER** served as Global's marketing director and was the Global representative responsible for creating Global's website and administering its sales database. Struckman and others were indicted in May 2004 for Conspiracy to Defraud the United States. Tax evasion charges were added to the Indictment in July 2005. In

February 2004, Struckman moved to Panama where he resided until arrested and forcibly returned to the United States to answer to the Indictment in January 2006. On November 8, 2007, a Seattle, Washington, jury convicted Struckman as charged.

3. Similar to the Global scheme, PQI sold "memberships" at three levels of participation: Q1 ($1,350.00), Q2 ($7,500.00) and Q3 ($18,750.00). PQI members gained access to various presentations, conference calls, DVDs, CDs, and, for Q2 and Q3 participants, offshore conferences organized by **CLAUDIA HIRMER.**

4. Synergy Productions International, Inc. ("SPI") was an administrative arm of PQI, responsible for the collection of money from the sale of memberships, CDs and tickets to the offshore conferences. SPI also purchased the CDs, PQI promotional items, office equipment and computers and paid the various expenses associated with the conferences. SPI was controlled by **MARK HIRMER and CLAUDIA HIRMER.**

5. MCD Productions was an entity with a bank account that accepted credit card transactions on behalf of SPI. MCD Productions was controlled by **MARK HIRMER and CLAUDIA HIRMER.**

6. PQI contracted with various vendors who sought access to PQI members to promote their theories and sell their products. Most vendors sold their products exclusively through PQI. PQI presented to its members lectures and materials from individuals who, among other topics, promoted anti-tax theories, such as the notions that the 16th Amendment was

never ratified and that no law required United States citizens to pay income taxes. PQI also presented vendors who promoted offshore corporate structures, debt elimination tactics and offshore investment opportunities.

7. PQI members were encouraged to refer clients to authorized vendors. Top-selling PQI members became part of PQI's "Executive Council," or "EC." The Executive Council assisted in administering and operating PQI, which included determining what other individuals or entities PQI would allow access to PQI members at PQI-hosted conferences. **ELLEN MEREDITH STUBENHAUS, a/k/a "Dr. Ellen"** (hereinafter **"ELLEN STUBENHAUS"**), **JOSEPH WILLIAM McPHILLIPS** (hereinafter **"JOSEPH McPHILLIPS"**), **ARNOLD RAY MANANSALA** (hereinafter **"ARNOLD MANANSALA"**), **DOVER EUGENE PERRY** (hereinafter **"DOVER PERRY"**), **MICHAEL GUY LEONARD** (hereinafter **MICHAEL LEONARD**), **and ARTHUR RAMIREZ MERINO** (hereinafter **ARTHUR MERINO**) all served as members of the Executive Council.

8. A PQI "Qualified Consultant," or "QC" was an individual who is authorized by PQI to sell one, two, or all three of PQI's membership levels, depending upon the QC's previous sales record. **MARK DANIEL LEITNER** (hereinafter **"MARK LEITNER"**) served as a Qualified Consultant for PQI and as a representative/consultant for at least one debt elimination vendor.

9. Southern Oregon Resource Center Educational Services, or "SORCE," was a PQI vendor located in Ashland, Oregon. SORCE was controlled by

EUGENE JOSEPH CASTERNOVIA, a/k/a "Gino" (hereinafter **"EUGENE CASTERNOVIA"**). **MARK BARRY LYON** (hereinafter **"MARK LYON"**) and **ROBERT LEIGHTON PENDELL** (hereinafter **ROBERT PENDELL**) worked for SORCE. **CASTERNOVIA, LYON and PENDELL** utilized seminars, presentations and materials to sell their services, which primarily consisted of the creation of a complex system of offshore entities used to hide and conceal assets.

10. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury. The IRS had responsibility for the ascertainment, assessment, and collection of taxes, including income taxes.

11. All citizens of the United States were taxed on their worldwide income. *U.S. Const. amend XVI; Title 26, United States Code, §§ 1, 61; Treas. Reg. § 1.1-1(b).* Thus, the tax laws of the United States, including the Internal Revenue Code (Title 26 of the United States Code), required every citizen and resident of the United States who received gross income from anywhere in the world in excess of the minimum filing amount established by law for a particular tax year to annually make and file an income tax return for that tax year. *Title 26, United States Code, § 6011(a); Treas. Reg. §1.6011(a).* Examples of the types of gross income that were required to be reported on an income tax return included: (a) compensation for services, including fees, commissions, fringe benefits and similar items; (b) gross income derived from business; (c) gains derived from dealings in property; (d) interest; (e) rents; (f) royalties; (g) dividends; (h) alimony; (i) annuities; (j) income from life insurance

and endowment contracts; (k) pensions; (l) income from discharge of indebtedness; (m) distributive share of partnership gross income; (n) income in respect of a decedent; and (o) income from an interest in an estate or trust.

12. Those who promoted offshore structures for U.S. taxpayers were attempting to illegally exploit the general rule that non-resident aliens are not required to pay income tax on U.S. interest income, U.S. capital gains, or income from the sale of foreign properties or from foreign sources. *Title 26, United States Code, §§ 871-879.* Thus, they attempted to create structures - in form - which created the appearance that a non-resident alien is the owner of the assets and income when in fact the owner was the U.S. taxpayer. Hence, the promoter was attempting to convert a U.S. taxpayer who was required to report worldwide income into a non-resident alien or entity that reports no income and thus no tax.

13. In addition, some U.S. citizens attempted to structure their income-earning activities through foreign entities in an illegal attempt to take advantage of the differences in the way the United States taxes its citizens as compared to foreign persons. Foreign persons (non-resident aliens and foreign corporations) were only taxed in the United States on income originating in the United States. *Title 26, United States Code, §§ 871-879.*

B. CHARGE

That from in or about May 2002, through on or about the date of the return of this Indictment, in the

Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,
DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER
and
ARTHUR RAMIREZ MERINO,

did knowingly and willfully combine, conspire, confederate and agree together and with other persons to: (1) defraud the Internal Revenue Service, an agency of the United States, by dishonest and deceitful means, by attempting to impede, impair, obstruct and defeat the lawful government functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of income tax; and (2) to commit offenses against the United States, specifically wire fraud, in violation of Title 18, United States Code, Section 1343.

C. MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

1. After the demise of Global, **CLAUDIA HIRMER, MARK HIRMER** and others created PQI

in order to continue to promote anti-government views and various schemes to hide and conceal assets from the United States Government and the IRS, including illegal tax evasion, offshore corporate structures and offshore investment schemes.

2. To that end, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, JOSEPH McPHILLIPS, ARNOLD MANANSALA, DOVER PERRY, MICHAEL LEONARD, MARK LEITNER, ARTHUR MERINO** and others sold PQI memberships, and in doing so, made false and fraudulent misrepresentations about the legality and authenticity of the programs and services PQI claimed to provide. Many of their customers were lured to PQI through the promise of "debt elimination."

3. PQI contracted with "vendors," which allowed the vendors access to PQI members so that the vendors could sell their illegal and fraudulent schemes to PQI members, with validation by PQI of the vendors' legitimacy. Such vendors included SORCE, represented by **EUGENE CASTERNOVIA, ROBERT PENDELL and MARK LYON,** several "debt elimination" companies, represented by **DOVER PERRY, MICHAEL LEONARD, MARK LEITNER, ARTHUR MERINO** and others, along with numerous others promoting various illegal tax evasion schemes.

4. Specifically, through their live, recorded and written materials, PQI, its owners and Executive Council members, and PQI vendors presented information in a manner which misled PQI members to believe that they legally could pay no taxes, become free of debt, accumulate wealth, and protect their

assets from the government and creditors through information PQI and it vendors alone could provide.

5. In addition, PQI owners, Executive Council members, Qualified Consultants and vendors often personally engaged in acts designed to impede, impair, obstruct and defeat the lawful government functions of the Internal Revenue Service in the ascertainment, computation, assessment and collection of their individual income tax. Such acts included frivolous correspondence, threats of legal retaliation, creation of false and fraudulent financial information, and extensive use of offshore entities and accounts.

6. Membership fees were paid to the Qualified Consultants and Executive Council members who recruited the member, a portion of which was sent to PQI through one of the **HIRMER'S** accounts. Payments were primarily made by cashier's checks, credit cards or wire transfer through an internet payment service. The Qualified Consultant's share of the profit from their first two sales was sent up-line to their own consultant; thereafter, the Qualified Consultant kept all the consultant-seller's portion of the membership fee.

7. The **HIRMERS** conducted the vast majority of their financial transactions through the use of cashier's checks and wire transfers. The **HIRMERS** wire transferred much of the money obtained from PQI sales through a series of entities located in Panama. The **HIRMERS** ultimately used the money for facilitation of the conspiracy and their own personal use.

8. One of the methods promoted by a PQI vendor and used extensively by PQI owners, Executive Council members, other vendors and members was a warehouse banking program called "MYICIS." The program offered anonymous banking services and protection from government intrusion. Communication and money movement were accomplished primarily by password-protected emails and wire transmissions, called Electronic Money Orders, and debit cards. MYICIS claimed they would not honor IRS levies. MYICIS was fraudulent and eventually depositors lost their money.

9. All of the defendants made statements and committed acts to hide and conceal the object of the conspiracy and the acts in furtherance thereof.

D. OVERT ACTS

In furtherance of this conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Northern District of Florida and elsewhere:

1. On or about April 9, 1999, **MARK LEITNER** signed and submitted a "Constructive Legal Notice" to his employer, the IRS, and the Social Security Administration, which revoked his social security number and established a tax-exempt status. **LEITNER** simultaneously stopped filing income tax returns.

2. On or about April 27, 2000, **MARK HIRMER and CLAUDIA HIRMER** opened a bank account in the name of MCD Productions at AmSouth

Bank. The account was primarily used to receive credit card deposits for Global, and then for PQI.

3. On or about March 15, 2001, **MARK LEITNER** sent to the IRS a "Notice of Affidavit Statement in Rebuttal to Internal Revenue Code."

4. On or about November 28, 2001, **MICHAEL LEONARD** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax system. The letter informed **LEONARD**, among other things, that "Federal tax laws are passed by Congress and signed by the President. The Internal Revenue Service is responsible for administrating federal tax laws fairly and ensuring that taxpayers comply with the laws.... While tax collection is not a popular function of government, it clearly is a necessary one. Without it all other functions would eventually cease.... There are people who encourage others to deliberately violate our nation's tax laws. It would be unfortunate if you were to rely on their opinions. These persons take legal statements out of context and claim that they are not subject to tax laws.... Federal courts have consistently ruled against the arguments you have made. Therefore, we will not respond to future correspondence concerning these issues."

5. On or about February 15, 2002, **MARK LYON** sent to the IRS a "Declaration of Tax Exempt Foreign Status."

6. On or about May 12, 2002, **CLAUDIA HIRMER** caused PQI to notify "retailers" of Global that PQI "has incorporated a grace period, referred to as a Grandfathering-Clause to allow retailers" from

Global to enroll in PQI and keep their status as "qualified for product purchase as well as keeping their existing customer base with their new enterprise as a consultant with PQI, Inc."

7. On or about May 12, 2002, **MARK LEITNER** transitioned from Global to PQI and became a PQI QC.

8. On or about May 12, 2002, **MICHAEL LEONARD** transitioned from Global to PQI and became an EC.

9. On or about May 12, 2002, **ELLEN STUBENHAUS** transitioned from Global to PQI and became an EC.

10. On or about June 7, 2002, **MARK HIRMER and CLAUDIA HIRMER** opened a bank account in the name of Synergy Productions International, Inc. at AmSouth Bank in order to deposit payments received for PQI sales.

11. On or about July 8, 2002, **CLAUDIA HIRMER and MARK HIRMER** paid $65,098.69 from the MCD Productions account at AmSouth Bank, toward the purchase of a waterfront home located at 511 Dory Avenue, Fort Walton Beach, Florida.

12. From on or about December 8 through 12, 2002, **CLAUDIA HIRMER** and others conducted a Q2 conference in Punta Cana, Dominican Republic, at the Barcelo Bavaro Beach Resort.

13. On or about December 3, 2002, **ELLEN STUBENHAUS** received from the IRS a "3175" letter

in response to her challenges to the IRS and the income tax system.

14. On or about January 27, 2003, **ELLEN STUBENHAUS** received correspondence from the IRS regarding the non-filing of her 1997, 1998 and 2001 income tax returns.

15. On or about January 13, 2003, **CLAUDIA HIRMER and MARK HIRMER** received from the IRS a "3175" letter in response to their challenges to the IRS and the income tax system.

16. On or about February 17, 2003, **ELLEN STUBENHAUS** filed a mail fraud report with the U.S. Postal Service in which she claimed fraud by the IRS for mailing correspondence to her regarding her non-filing of income tax returns.

17. On or about April 2, 2003, **MICHAEL LEONARD** filed a mail fraud report with the U.S. Postal Service in which he claimed fraud by the New York State Department of Taxation and Finance for mailing correspondence to him regarding his non-filing of state income tax returns.

18. From on or about June 1 through 6, 2003, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, ARTHUR MERINO** and others conducted a Q2 conference in Cancun, Mexico.

19. On or about May 27, 2003, **ARTHUR MERINO** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax system.

20. On or about July 7, 2003, **ARTHUR MERINO,** using his Corporation Sole, Everest Consulting, sent an "updated info" email to **CLAUDIA HIRMER** in which **MERINO** provided PQI EC members and Qualified Consultants with information about selling Financial Solutions, **MERINO'S** "asset protection, debt elimination, and education" business. **MERINO** offered a $300.00 "thank you" bonus for each referral.

21. On or about July 7, 2003, **ELLEN STUBENHAUS** received notices of deficiency for the 1997, 1998 and 2001 income tax years.

22. On or about July 14, 2003, **MARK LEITNER** stated on a voice mail message, "You were looking into how to completely eliminate your income tax burden and that's what we do for you."

23. On or about August 18, 2003, **MARK LEITNER** falsely told a potential customer, "...everything that PQI has, has a track record, has never been challenged, and is legal."

24. On or about October 15, 2003, **MARK HIRMER** sent an email to a potential PQI member promoting PQI's Q1 and Q2 products and speakers who advocate anti-government and anti-tax agendas.

25. From on or about December 7 through 12, 2003, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, EUGENE CASTERNOVIA, ARNOLD MANANSALA, MICHAEL LEONARD, MARK LEITNER, JOSEPH McPHILLIPS** and others conducted a Q2 conference in Cancun, Mexico.

26. In or about 2003, **EUGENE CASTERNOVIA** and others created a CD for PQI's Q1 members. On the CD, **CASTERNOVIA** explained his offshore corporate structure as like a puppet show, where he is the puppeteer and, as long as he does not reveal himself, he can order things to be done. **CASTERNOVIA** added that it would be "fraud" to report information about the foreign companies to the IRS, and that "this is a very good thing." that "you're forbidden from telling on yourself."

27. On or about March 2, 2004, and April 29, 2004, **MARK LEITNER** explained to a potential customer that they should control all their assets but not "own" anything, because ownership is a "liability." **LEITNER** also advocated using offshore corporations to establish "complete anonymity" for the movement of money.

28. On or about March 8, 2004, **MICHAEL LEONARD,** who had failed to file state income tax returns since 2001 and federal income tax returns since 1999, received correspondence from the New York State Department of Taxation in which **LEONARD** was told that his dispute with the legality of the Department's right to collect tax revenue was considered frivolous and without merit. The letter further referenced the legality of the federal income tax system, as upheld by numerous courts.

29. On or about March 16, 2004, **ARNOLD MANANSALA** received from the IRS a "3175" letter in response to his challenges to the IRS and the income tax system.

30. On or before April 14, 2004, **CLAUDIA HIRMER** made a recorded telephone call for the benefit of PQI members, during which **CLAUDIA HIRMER** encouraged members to buy two products sold by PQI vendors, both of which promoted tax evision by espousing the idea that the IRS did not have the legal authority to tax income.

31. On or about April 29, 2004, and March 21, 2006, **MARK LEITNER** falsely told a potential customer, in reference to the investments offered by PQI, that "all of the investments have paid out;" that "there have been no negative investments at all since PQI started" and that PQI performs "due diligence" and does not allow the promotion of investments that have not produced positive results in the last three years.

32. On or after June 7, 2004, **ARTHUR MERINO** was notified that the IRS made tax assessments against him for 2000 and 2001. **MERINO** was subsequently notifieid of tax assessments for 2002. **MERINO** had not filed a tax return since 1999.

33. From on or about June 20 through 26, 2004, **CLAUDIA HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARTHUR MERINO, EUGENE CASTERNOVIA, MARK LYON, ROBERT PENDELL** and others conducted a Q2 conference in Cabo, Mexico.

34. On or about June 23, 2004, **EUGENE CASTERNOVIA** told a potential SORCE customer that he could assist her in protecting her assets and develop a "credible international business and investment presence." **CASTERNOVIA** told her that

the government could not trace the offshore structures back to her. **CASTERNOVIA** also offered education and resources to assist her in becoming a "sovereign American," and requested that she refer anyone interested in "offshore" structures to PQI.

35. From on or about September 19 through 25, 2004, **CLAUDIA HIRMER, ELLEN STUBENHAUS, ARNOLD MANANSALA** and others conducted a Q3 conference in Panama City, Panama.

36. On or about September 27, 2004, L.G. paid to **ELLEN STUBENHAUS** $1,350.00 to join PQI at the Q1 level. L.G. joined PQI in part because **STUBENHAUS** falsely represented to her that she does not have an obligation to file income tax returns and that the IRS has never challenged her.

37. On or about December 2, 2004, **EUGENE CASTERNOVIA and JOSEPH McPHILLIPS** discussed via email recording an overview of SORCE as a "teaser to get them [clients] to a live presentation."

38. On or about December 27, 2004, **CLAUDIA HIRMER** received an email from David Struckman in which Struckman instructed **CLAUDIA HIRMER** to wire transfer "$32,000 to Caribbean Properties ([M.M.] since they don't want to see my name) and make cashiers check for 13,000.00 even to University of Puget Sound, and overnight to Anthony Struckman.... so this will be a 45,000.00 advance for March Q2 payment to me (hopefully we will make some money this time in reforestation!)" After Struckman instructed **CLAUDIA HIRMER** to make monthly $10,000 payments to "this high placed attorney"

through his "virtual gold account," Struckman stated to **CLAUDIA HIRMER,** "I guess this is still cheaper than income tax and especially jail!!"

39. On or about December 28, 2004, **MARK HIRMER and CLAUDIA HIRMER** "ledger" transferred $32,000.00 to Caribbean Properties and sent a $13,000.00 cashier's check to the University of Puget Sound from their "Panama Title and Escrow" account at Credicorp Bank in Panama, as instructed by David Struckman.

40. From in or about May through December 2004, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $700,000.00 from the SPI AmSouth bank account to their Panama Title and Escrow account at Credicorp Bank in Panama.

41. From on or about February 19 through 24, 2005, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARNOLD MANANSALA, MICHAEL LEONARD, JOSEPH McPHILLIPS, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Cancun, Mexico.

42. From on or about February 22 through 23, 2005, **EUGENE CASTERNOVIA** recorded a "Sovereign Solutions" DVD, in which he falsely stated to potential SORCE customers that the IRS had told him to pay taxes on his own money, and he said no; that the IRS agreed with him and left him alone. **CASTERNOVIA** added that he had been before the IRS "system" six times and each time they "folded up their books and left." **CASTERNOVIA** also claimed that his accountant had told him to obtain an

Employment Identification Number from the IRS and he had refused.

43. From on or about February 22 through 23, 2005, **ROBERT PENDELL** recorded a "Sovereign Solutions" DVD, in which he falsely claimed that: (1) "my tax liability is zero;" (2) "I have 30-40% more of my income;" (3) I am a free individual, no one has a claim on my labor;" and (4) I owe nothing to no one."

44. On or about June 18, 2005, **DOVER PERRY** made a "debt elimination" presentation at a Cutting Edge Seminar, during which he falsely claimed that he had successfully eliminated his student loan debt through the credit restoration process he was selling, when in fact he had defaulted on the debt and the student loans were collection accounts. **PERRY** also falsely claimed to have been a professional football player with the Seattle Seahawks.

45. On or about June 20, 2005, **DOVER PERRY** stated to a potential PQI customer that he held his assets in a "corporation sole" which, he explained, was an ecclesiastical structure. **PERRY** stated he was justified in his use of this structure because he was "doing God's work by teaching people how to get out of debt."

46. On or about June 20, 2005, **DOVER PERRY** falsely stated to a potential PQI customer that: (1) "not one person in Quest has lost a penny to our investments;" (2) if he had his IRS Master File "decoded" through vendor IMF Decoder, he could never be criminally prosecuted for tax evasion; (3) if he would rather "stay in the box," i.e., file income tax returns, then he should get "structured" by **EUGENE**

CASTERNOVIA at SORCE and learn how to operate "external to the Internal Revenue Code."

47. On or about June 27, 2005, **JOSEPH McPHILLIPS** sent $12,500.00 to PQI for sales made by David Struckman, who had been indicted in the District of Washington in May 2004.

48. On or about July 28, 2005, **ARNOLD MANANSALA** emailed to a PQI member a Powerpoint Presentation he had created for future presentations. In the Powerpoint, **MANANSALA** stated: (1) "Quest International" is a Panama based IBC with a three-year track record, over 15,000 students, and proven world class contributors; (2) his educational objectives were to teach how to "lawfully keep up to 100% of what you make (personal and business); to protect all assets from Liens & Judgments; to properly structure your corporate and private affairs;" (3) the educational system does not teach how to keep the money you earn, nor to keep other people from that money, including taxation. **MANANSALA** claimed to be capable of securing for his clients a letter from the IRS stating that the student "had no 1040 filing requirement," and that he, himself, was successfully practicing the techniques.

49. On or about August 4, 2005, during a telephone call which included **JOSEPH McPHILLIPS** and David Struckman, Struckman stated that he was in Central America permanently and explained that **McPHILLIPS** assists the clients Struckman brings into PQI. **McPHILLIPS** explained that he was Struckman's proxy.

50. On or about October 8, 2005, **ROBERT PENDELL** advised a potential client as to how to illegally evade paying taxes by setting up offshore entities and appearing to be simply a "salesman" for his company, rather than the owner. **PENDELL** explained that the purpose for the structure was "to keep you from... having your assets sued or seized by the predatory legal authority or taxing authorities that we live under."

51. On or about October 8, 2005, **ROBERT PENDELL** advised a potential client that none of their clients have ever gotten into trouble with the IRS after utilizing SORCE and setting up their offshore corporations. **PENDELL** stated that the government cannot track ownership of their offshore structures because "your name is completely off the business" and all assets belong to the offshore company.

52. From on or about October 23 through 29, 2005, **CLAUDIA HIRMER, MARK HIRMER, ELLEN STUBENHAUS, DOVER PERRY, ARNOLD MANANSALA, MICHAEL LEONARD, MARK LEITNER, JOSEPH McPHILLIPS, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Ixtapa, Mexico.

53. From in or about March through November 2005, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $1.5 million from their SPI AmSouth and MYICIS accounts to their accounts at Credicorp Bank in Panama.

54. On or about January 23, 2006, **CLAUDIA HIRMER** approved a flyer which promoted the upcoming Quest Live seminar. The flyer was created

by a vendor who promoted tax evasion by espousing the idea that the IRS did not have the legal authority to tax income.

55. On or about February 2, 2006, **CLAUDIA HIRMER and MARK HIRMER** caused a $400,000.00 wire transfer to an attorney representing David Struckman in his criminal case in Seattle, Washington.

56. From on or about February 25 through March 5, 2006, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA, ELLEN STUBENHAUS, ARNOLD MANANSALA, DOVER PERRY** and others conducted a Q3 conference in Malta.

57. On or about May 6, 2006, at a Cutting Edge Seminar, **DOVER PERRY** falsely stated that, through the use of offshore business structures, clients could keep all of their investment returns without taxation.

58. From on or about May 27 through June 4, 2006, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA** and others conducted a Q2 conference in Cancun, Mexico.

59. On or about June 29, 2006, **MARK HIRMER** caused a $55,979.75 cashier's check to be drawn on Regions Bank for the purchase of a 28′3″ Sunesta 274 Chaparral boat titled to "Oriskany, LLC."

60. From on or about December 2 through 9, 2006, **CLAUDIA HIRMER, MARK HIRMER** and others conducted a Q2 conference in Cancun, Mexico.

61. From in or about January through April 2006, **CLAUDIA HIRMER and MARK HIRMER** wire transferred over $800,000.00 from their MYICIS account to their accounts at Credicorp Bank in Panama.

62. On or about October 30 2006, **CLAUDIA HIRMER and MARK HIRMER** caused a $16,859.83 wire transfer to be sent from their SPI account at Credicorp Bank in Panama to a title company to pay closing costs associated with a $635,000.00 second mortgage on their personal property located at 511 Dory Avenue, Fort Walton Beach, Florida. The second mortgage was held by Hope International Foundation in Panama, a company the **HIRMERS** controlled.

63. On or about December 29, 2006, **CLAUDIA HIRMER and MARK HIRMER** purchased a $759,557.87 cashier's check, issued to a title company, from Credicorp Bank. The **HIRMERS,** using the name "Country Home Solutions," used the money to purchase their home at 104 Kent Court, Niceville, Florida.

64. From on or about May 14 through 21, 2007, **CLAUDIA HIRMER, MARK HIRMER, EUGENE CASTERNOVIA, ARNOLD MANANSALA, DOVER PERRY** and others conducted a Q3 conference on a Mediterranean cruise aboard the Galaxy cruise ship.

65. From on or about September 16, 2007, through September 22, 2007, **CLAUDIA HIRMER, MARK HIRMER** and others conducted a Q2 conference in Cancun, Mexico.

66. On or about October 24, 2007, **MARK HIRMER** purchased a $22,730 cashier's check with money previously deposited into the MCD Productions account at SunTrust Bank. The **HIRMERS** used the money to purchase and install a brick paver driveway and patio at their waterfront residence on Dory Avenue.

67. On or about December 28, 2007, **MARK HIRMER,** on behalf of MCD Productions, purchased a SunTrust Bank Official Check for $10,000, payable to his daughter and her husband.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

1. Parts A, C and D of Count One are hereby realleged as if fully set forth herein.

2. That from in or about May 2002 through on or about the date of the return of this Indictment, in the Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER,
MARK STEVEN HIRMER,
EUGENE JOSEPH CASTERNOVIA,
a/k/a "Gino,"
ROBERT LEIGHTON PENDELL,
MARK BARRY LYON,
ELLEN MEREDITH STUBENHAUS,
a/k/a "Dr. Ellen,"
JOSEPH WILLIAM McPHILLIPS,
ARNOLD RAY MANANSALA,

DOVER EUGENE PERRY,
MICHAEL GUY LEONARD,
MARK DANIEL LEITNER,
ARTHUR RAMIREZ MERINO
and
JEFFRY JEAN JENKS,

did knowingly combine, conspire, confederate and agree together and with other persons, to conduct and attempt to conduct financial transactions affecting interstate commerce, which funds were in fact derived from specified unlawful activity, that is, Wire Fraud, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

All in violation of Title 18, United States Code, Section 1956(h).

COUNT THREE

1. Parts A, C and D of Count One are hereby realleged as if fully set forth herein.

2. That beginning on or about April 15, 2002, through the date of this Indictment, in the Northern District of Florida and elsewhere, the defendants,

CLAUDIA CONSTANCE HIRMER
and
MARK STEVEN HIRMER,

did willfully attempt to evade and defeat the payment of a substantial portion of the income taxes due and owing by them to the United States of America for the calendar years 1996 through 2001, in the amount of at least $678,036.40.00 as to **CLAUDIA HIRMER,** and $676,343.30 as to **MARK HIRMER,** by committing at least one act of evasion, including: (1) concealing and attempting to conceal from the Internal Revenue Service the nature and extent of their assets and the location thereof; and (2) placing funds and property in the names of nominees.

All in violation of Title 26, United States Code, Sections 7201 and 2.

* * *

APPENDIX D

Doc 303-2

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

[SEAL]

SIGNATURE /s/Milton O. Gustafson	
NAME Milton O. Gustafson	DATE 5-3-85
TITLE Chief, Legislative & Diplomatic Branch	
NAME AND ADDRESS OF DEPOSITORY The National Archives Washington, D.C. 20408	

NA FORM APR 85 1407-A

CONTENTS

SIXTEENTH AMENDMENT

COPY OF THE JOINT RESOLUTION OF THE FIRST SESSION OF THE SIXTY-FIRST CONGRESS, PROPOSING AN AMENDMENT TO THE CONSTITUTION RESPECTING THE POWER OF CONGRESS TO LAY AND COLLECT TAXES OF INCOMES.

MEMORANDUM CONCERNING THE QUESTION OF APPROVAL OR DISAPPROVAL BY THE PRESIDENT.

CONCURRENT RESOLUTION FOR THE TRANSMITTAL OF COPIES OF THE SIXTEENTH AMENDMENT TO THE EXECUTIVES OF THE SEVERAL STATES.

COPY OF THE LETTER WHICH WITH ONE CERTIFIED AND ONE UNCERTIFIED COPY OF THE RESOLUTION WAS MAILED TO THE GOVERNOR OF EACH STATE, JULY 27, 1909.

MEMORANDUM FROM THE CHIEF CLERK, FEBRUARY 10, 1913.

MEMORANDA FROM THE OFFICE OF THE SOLICITOR.

PROCLAMATION OF THE SECRETARY OF STATE.

LIST OF STATES WHICH RATIFIED THE SIXTEENTH AMENDMENT AND DATES OF RATIFICATION.

RATIFICATIONS, REJECTIONS AND CORRESPONDENCE CONCERNING THE ACTION TAKEN BY THE STATES.

* * *

DEPARTMENT OF STATE,
WASHINGTON. *July 26, 1907*

His Excellency

The Governor of the State of

Sir:

I have the honor to enclose a certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an amendment to the Constitution of the United States," with the request that you cause the same to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State, as required by Section 205, Revised Statutes of the United States. (See overleaf.)

An acknowledgement of the receipt of this communication is requested.

I have the honor to be, Sir,

Your obedient servant,

(Signed) P.C. Knox

Enclosure:

Joint Resolution as above.

Sec. 205. Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as part of the Constitution of the United States. --Revised Statutes, 1878.

No.

UNITED STATES OF AMERICA,
[SEAL]
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I Certify *That the copy hereto attached is a true copy of a resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," the original of which is on file in this Department.*

In testimony whereof *I, P. C. KNOX, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed, and my name to be subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this day of , 1909.*

Secretary of State

By

Chief, Bureau of Citizenship

S. J. Res. 40.

[Handwritten: The original of this Resolution is bound with Resolutions of the 1st Session of the 61st Congress. JGC]

Sixty-first Congress
of the United States of America;
At the First Session,

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (*two-thirds of each House concurring therein*), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

J G CANNON
Speaker of the House of Representatives.

J S SHERMAN
Vice-President of the United States and
President of the Senate.

Attest:

A MCDOWELL
Clerk of the House of Representatives.

CHARLES G. BENNETT
Secretary

By HENRY H. GILFRY
Chief Clerk

I certify that this Joint Resolution originated in the Senate.

CHARLES G. BENNETT
Secretary.

By HENRY H. GILFRY
Chief Clerk

DEPARTMENT OF STATE
OFFICE OF THE CHIEF CLERK

MEMORANDUM

February 10, 1913.

Respectfully referred to the Secretary with the recommendation that the matter be submitted to the Solicitor for a report as to whether the ratifications are in proper form and the preparation of the necessary announcement be made by the Secretary of State under Section 205 of the Revised Statutes.

/s/ []
Chief Clerk

[Handwritten: Referred to Solicitor [] Feb 10/13]

BUREAU OF ROLLS
AND LIBRARY

DEPARTMENT OF STATE
WASHINGTON

MEMORANDUM FOR THE CHIEF CLERK.

February 10, 1913.

My dear Mr. McNeir:

I am advising you that thirty-six States have officially notified the Department of their ratification of the proposed Income Tax Amendment to the Constitution of the United States in order that the Secretary may be advised of the fact for the purpose of taking such action as he may desire in pursuance with Section 205 of the Revised Statutes.

Attached hereto you will find a list of the thirty-six States as well as copies of the Joint Resolution of Congress proposing the Amendment, and the Department's letter of July 26, 1909, submitting the Amendment to the States for their action thereon.

While the original papers relating to the Constitution of the United States are filed in the Bureau of Rolls and Library, it is presumed that a report on the legality of the Ratifications in question is a matter which the Secretary would probably refer to the Solicitor of the Department.

I wish to say, however, that with one or two exceptions the States have furnished a certified copy of their Resolution ratifying the Amendment, but in

many cases the Resolution of Congress proposing the Amendment has been incorrectly quoted.

In addition to the thirty-six States, the States of Wyoming and New Mexico have notified the Department by telegraph of their Ratification, an dit is probable that certificates of their action will be received in a few days.

/s/ []
Chief of Bureau.

DEPARTMENT OF STATE

OFFICE OF THE SOLICITOR

MEMORANDUM

February 15, 1913.

Ratification of the 16th Amendment to the Constitution of the United States.

The Secretary has referred to the Solicitor's Office for determination the question whether the notices of ratifications by the several states of the proposed 16th amendment to the Constitution are in proper form, and if they are found to be in proper form, it is requested that this office prepare the necessary announcement to be made by the Secretary of State under Section 205 of the Revised Statutes.

The 61st Congress of the United States, at the first session thereof, passed the following resolution which was deposited in the Department of State July 31, 1909:

> "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein) , That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of

the several States, shall be valid to all intents and purposes as a part of the Constitution:

'Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'"

On July 27, 1909, the following concurrent resolution was passed by Congress:

"Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed July twelfth, nineteen hundred and nine, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment: and that be request the executive of each state that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification."

1909

On July 26, 1907, being the day before the above resolution was passed, the Secretary of State sent to the Governors of the several States certified copies of the joint resolution of Congress proposing the 16th amendment to the Constitution with the following letter of transmission:

"I have the honor to enclose a certified copy of a Resolution of Congress, entitled 'Joint Resolution Proposing an Amendment to the Constitution of the United States,' with the request that you cause the same to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State, as required by Section 205, Revised Statutes of the United States. (See overleaf.) [Note: Reference here is to R. S. Sec. 205 which is quoted infra.]

"An acknowledgment of the receipt of this communication is requested."

Section 205 of the Revised Statutes provides:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

The Department has received information from forty-two states with reference to the action taken by the legislatures of those states on the resolution of Congress proposing the 16th amendment to the Constitution. It appears from this information that four states (Connecticut, New Hampshire, Rhode

Island, and Utah) have rejected the amendment. The remaining thirty-eight states have taken action purporting to ratify the amendment, the State of Arkansas being one of these states. Although the Governor of Arkansas had previously notified the Department that the legislature of that state had refused to ratify the amendment, information was subsequently received indicating that the legislature had reconsidered this action and voted to ratify the proposed amendment.

In all cases in which the legislatures appear to have acted favorably upon the proposed amendment, either the Governor or some other state official has transmitted to the Department a certified copy of the resolution passed by the particular legislature, except in the case of Minnesota, in which case the secretary of the Governor merely informed the Department that the state legislature had ratified the proposed amendment and that the Governor had approved the ratification.

The following list shows the order in which the amendment was ratified by the legislatures of the various states, the date given being the date upon which the resolution was passed by the legislature, or if this information does not appear on the certified copy of the resolution on file in the Department, the date indicated is that upon which the resolution of the state legislature was approved by the Governor:

Alabama	August 17, 1909.	"Approved". Doesn't appear whether Governor signed.

Kentucky	February 8 or 9, 1910	Date passed by legislature. Not signed by Governor; Legislature acted on resolution of Congress before it was transmitted to it by Governor.
South Carolina	February 19, 1910.	Date passed by legislature. Signed by Governor.
Illinois	March 1, 1910.	Date passed by legislature. Not signed by Governor.
Mississippi	March 7, 1910.	Date passed by legislature. Signed by Governor.
Oklahoma	March 14, 1910.	Date signed by Governor.
Maryland	April 8, 1910.	"Approved". Not signed by Governor.
Georgia	August 3, 1910.	"Approved". Doesn't appear whether Governor signed.
Texas	August 17, 1910.	Date signed by Governor.
Ohio	January 19, 1911.	"Adopted". Doesn't appear whether signed by Governor, - likely not.

Idaho	January 20, 1911.	Date passed by legislature. Not signed by Governor.
Oregon	January 23, 1911.	Date passed by legislature. Not signed by Governor.
Washington	January 26, 1911.	Date passed by legislature. Not signed by Governor.
California	January 31, 1911.	Date passed by legislature. Doesn't appear Governor signed.
Montana	January 31, 1911.	Date signed by Governor.
Indiana	February 6, 1911.	Date signed by Governor.
Nevada	February 8, 1911.	"Approved". Doesn't appear whether signed by Governor.
North Carolina	February 11, 1911.	Date passed by legislature. Not signed by Governor.
Nebraska	February 11, 1911.	Date signed by Governor.
Kansas	February 18, 1911.	Date passed by legislature. Signed by Governor.
Colorado	February 20, 1911.	Date signed by Governor.

North Dakota	February 21, 1911.	Date signed by Governor.
Michigan	February 23, 1911.	Date passed by legislature. Not signed by the Governor but it is attested by the Governor.
Iowa	February 27, 1911.	Date signed by Governor.
Missouri	March 16, 1911.	Date passed by legislature. Doesn't appear whether signed by Governor.
Maine	March 31, 1911.	Date passed by legislature. Signed by Governor.
Tennessee	April 7, 1911.	Date passed by legislature. Signed by Governor.
Arkansas	April 22, 1911.	Date passed by legislature. Governor vetoed June 1, 1912. March 28, 1911, Governor informed Secretary of State legislature had failed to pass resolution. So first rejected and subsequently ratified.
Wisconsin	May 26, 1911.	Date received by Secretary of State of

		Wisconsin. Not signed by Governor.
New York	July 12, 1911,	Date passed by legislature. Not signed by Governor.
South Dakota	February 3, 1912.	Date filed by State Secretary of State. Not signed by Governor. No date of adoption given.
Arizona	April 9, 1912.	Not clear whether date passed by legislature or signed by Governor.
Minnesota	June 11, 1912.	Date passed by legislature. Signed by Governor. Secretary of Governor merely informs Department and no resolution of legislature enclosed.
Louisiana	July 1, 1912.	Date passed by legislature. Signed by Governor.
Delaware	February 3, 1913.	Date passsd by legislature. Not signed by Governor.
Wyoming	February 3, 1913.	Doesn't appear whether date passed by legislature or signed by Governor. Signed by Governor.

New Jersey	February 5, 1913.	Date signed by Governor.
New Mexico	February 5, 1913.	Date signed by Governor.

Ratification by Arkansas.
Power of the Governor to veto.

It will be observed from the above record that the Governor of the State of Arkansas vetoed the resolution passed by the legislature of that State. It is submitted, however, that this does not in any way invalidate the action of the legislature or nullify the effect of the resolution, as it is believed that the approval of the Governor is not necessary and that he has not the power of veto in such cases. (See Solicitor's memorandum on this subject dated April 20, 1911.)

Power of a State to Ratify after having once Rejected the Proposed Amendment.

It will also be observed that Arkansas ratified the proposed 16th Amendment after having previously rejected it. It would appear that the Legislature of a State may act adversely any number of times and it still has the right to act favorably and the ratification is as valid as if it had never acted adversely on the question. New Jersey ratified the 13th Amendment after having rejected it. In the case of the 14th Amendment, four States acted similarly (North Carolina, South Carolina, Georgia, Virginia).

In all these cases the states which had taken action ratifying the various amendments before the

Secretary's announcement was made were included by the Secretary of State in the list of states ratifying.

In the case of the 14th Amendment, all the states mentioned above except Virginia, which state ratified the amendment after the Secretary's announcement was made, were included in the declaration of the Secretary of State. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Kentucky's Ratification.

It is to be noted that the Kentucky legislature passed a resolution ratifying the proposed 16th Amendment before a copy of the resolution of Congress was transmitted to that body by the Governor and that when the Governor received the certified copy of the Joint Resolution of Congress from the Secretary of State and transmitted it to the legislature, the latter refused to act on it. Inasmuch as there is no statute or other law or Congressional action which might properly be regarded as preventing the legislature's acting upon the Resolution of Congress proposing an amendment to the Constitution until a copy of the Resolution has been sent by the Secretary of State to the Governor and until the latter officer has transmitted the same to the legislature, it is believed that the legislature of Kentucky has validly ratified the proposed 16th Amendment. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Errors in Resolutions of State Legislatures in quoting the Proposed 16th Amendment.

In the certified copies of the resolutions passed by the legislatures of the several states ratifying the proposed 16th amendment, it appears that only four of these resolutions (those submitted by Arizona, North Dakota, Tennessee and New Mexico) have quoted absolutely accurately and correctly the 16th amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or wording. Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording. The following is a list of the states indicating the errors made:

Alabama	Error of punctuation.
Kentucky	Errors of punctuation and capitalization.
South Carolina	Error of capitalization.
Illinois	Error of capitalization; "renumeration" instead of "enumeration".
Mississippi	"The" omitted before "Congress"; errors of punctuation and capitalization; "of" instead of "or" before "enumeration".

Oklahoma	Error of capitalization; "from" used instead of "without regard to" before "any".
Maryland	Error of punctuation.
Georgia	"Levy" used instead of "lay"; errors of punctuation; "sources" instead of "source"; "income" instead of "incomes".
Texas	Error of punctuation.
Ohio	Error of capitalization.
Idaho	Error of capitalization; "of" instead of "or" before "enumeration".
Oregon	Error of capitalization.
Washington	Errors of capitalization and punctuation; "income" instead of "incomes".
California	"The" omitted before "Congress"; "any" before "census", and "or" before "enumeration" omitted; errors of punctuation and capitalization.
Montana	Errors of capitalization.
Indiana	Error of capitalization.
Nevada	Errors of punctuation and capitalization.
North Carolina	Errors of punctuation and capitalization.
Nebraska	Error of capitalization.

Kansas	Error of capitalization.
Colorado	Error of punctuation.
North Dakota	No errors.
Michigan	Error of capitalization.
Iowa	Error of capitalization.
Missouri	Error of capitalization; "levy" instead of "lay".
Maine	Errors of punctuation and capitalization.
Tennessee	No errors.
Arkansas	The" before "Congress" omitted; "the" before "power" inserted; errors of punctuation and capitalization.
Wisconsin	Errors of capitalization.
New York	Errors of punctuation and capitalization.
South Dakota	"The" before "Congress" omitted; errors of punctuation and capitalization.
Arizona	No errors.
Minnesota	Resolution of the State Legislature not filed with the Department.
Louisiana	Error of punctuation.
Delaware	"Article XVI" omitted; errors of punctuation.
Wyoming	Errors of punctuation and capitalization.

New Jersey	Error of capitalization.
New Mexico	No errors.

A careful examination of the resolutions of the various states on file in the Department, ratifying the 15th amendment to the Constitution, shows that there are many errors of punctuation and capitalization and some, although no substantial, errors of wording, in quoting the article proposed by Congress as shown in the following list:

"Article XV.

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

New Jersey	Capital letters omitted.
Minnesota	Several errors of capitalization and punctuation.
Georgia	The word "or" is written in after the word "race" but marked out with pencil.
Ohio	Errors of punctuation.
Kansas	Errors of capitalization. Section 2. Wording entirely wrong as follows: "The Congress, by appropriate legislation may enforce the provisions of this article." Kansas ratified as above,

	February 1869, but in January, 1870, appears to have ratified again, copying the amendment correctly.
Rhode Island	The word "rights" is used instead of the word "right", and there are errors of capitalization. These errors appear in one copy filed in the Department, but there is a second copy which is entirely correct.
Mississippi	Errors of punctuation.
Missouri	Errors of capitalization.
Vermont	Errors of capitalization.
Florida	Errors of capitalization and punctuation.
Connecticut	Errors of punctuation, commas omitted.
Indiana	The word "the" is inserted, before the word "citizens".
New York	The word "the" is inserted before the word "citizens".
Pennsylvania	Errors of punctuation, commas omitted.
South Carolina	Errors of punctuation, commas omitted.
Wisconsin	Capital letters omitted and the word "thc" inserted.
Michigan	Errors of capitalization and punctuation.

Illinois	Errors of punctuation, commas omitted.
Louisiana	The word "by" is omitted before the word "any", in the original, but is inserted in pencil. Errors of capitalization.
West Virginia	Errors of capitalization.
Nevada	Errors of capitalization.
North Carolina	Error of punctuation; comma inserted after the word "state".

In the resolutions of the state legislatures on file in the Department, ratifying the 14th amendment to the Constitution, there are many errors of punctuation, capitalization, and wording, some of the errors in wording being substantial errors, as will appear from the following list:

"Article XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole

number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But

neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Connecticut	Errors of punctuation and capitalization; "and" for "any" after "pay", Section 4.
New Hampshire	Errors of punctuation and capitalization; "the for "a" after "of and before "State", Section 2; "of" inserted between "but" and "all", Section 4.
Tennessee	Errors of punctuation and capitalization.
New Jersey	Errors of punctuation and capitalization.
Oregon	Errors of punctuation and capitalization.
Vermont	Errors of punctuation and capitalization; "that" for "the", Section 5.
New York	Errors of punctuation and capitalization; "or" for "and" between "executive" and "judicial", Section 2; "or" for "and" between "President" and

	"Vice President", Section 3.
Ohio	Errors of punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3.
Illinois	Errors of punctuation and capitalization.
West Virginia	Errors of punctuation and capitalization; "for" for "of" between "elector" and "President", Section 3; "rebellion or" inserted between "in" and "insurrection"; "or bounties" omitted after "pensions", Section 4.
Kansas	Errors of punctuation and capitalization.
Maine	Errors of punctuation and capitalization.
Nevada	Errors of punctuation and capitalization; "being" inserted between "and" and "citizens", Section 2; "or" instead of "and" between "obligations" and "claims", Section 4. "The" omitted before "Congress", Section 5.
Missouri	Errors of punctuation and capitalization.
Indiana	Errors of punctuation and capitalization; "or" for "nor" between "States" and "any",

	Section 4; "claims" for "claim" between "any" and "for", Section 4.
Minnesota	Errors of punctuation and capitalization.
Rhode Island	Errors of punctuation and capitalization; "or" for "and" between "executive" and "Judicial", Section 2; "to" for "or" between "assume" and "pay", Section 4.
Wisconsin	Errors of punctuation and capitalization; "numbers" for "number" between "jurisdiction" and "counting"; Section 2; "whenever" for "when" between "but" and "the", Section 2; "the choice of" omitted between "for" and "electors", Section 2; "of" for "for" between "electors" and "President", Section 2; "of the United States" omitted between "Vice President" and "Representative", Section 2; "or for United States" inserted before "Representatives", Section 2; "the" omitted before "Executive", Section 2; "or" for "and" between "Executive" and "Judicial", Section 2; "of a state" omitted after "judicial officers", Section 2; "to" for "in" between "reduced" and "the", Section 2. Section 2 is erroneously

quoted: "Representatives shall be apportioned among the several states according to their respective number counting the whole number of persons in each state, excluding Indians not taxed. But whenever the right to vote at any election for electors of President and Vice President, or for United States Representatives in Congress, Executive or Judicial Officers or the members of the Legislature thereof, is denied to any of the male inhabitants of such state being twenty one years of age and citizens of the United States or in any way abridged except for participation in rebellion or other crimes the basis of representation therein shall be reduced to the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."

"or" for "and" between "President" and "Vice-President", Section 3; "or as an officer of the United States" omitted between "Congress" and "or", Section 3; "vote of two thirds" changed to "a two thirds vote"; "the" inserted between

	"for" and "payment"; "the" inserted after "suppressing", Section 4; "that" for "the", Section 5.
Pennsylvania	Errors in punctuation and capitalization; "laws" for "law" where the word first appears in Section 1; "law" for "laws", last word, Section 1; "or" for "nor" between "States" and "any" where the word first appears in Section 4.
Michigan	Errors in punctuation; "or" for "and" between "President" and "Vice President", Section 3.
Massachusetts	Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted between "representation" and "shall", Section 2; "such" for "male" before "citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Nebraska	Errors of punctuation and capitalization; "any" inserted before "electors", Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Iowa	Errors in punctuation and capitalization; "abridge" for

	"abridged" after "way", Section 2.
Arkansas	Errors in punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3; "or under any State" omitted after "United States", Section 3. In a second copy of the resolution, the proposed amendment is copied correctly so far as the wording is concerned, but there are errors of punctuation and capitalization. In Section 2 there is a period after "numbers" and "counting" is commenced with a capital letter.
Florida	Errors in punctuation and capitalization; "First" is substituted for "Article 1"; "Second" for "Article 2"; "Third" for "Article 3"; "Fourth" for "Article 4"; "Fifth" for "Article 5"; "of" omitted before "the State" in first sentence, Section 1; "or" for "and" between "President" and "Vice President", Section 3; "and" for "or" between "aid" and "comfort", Section 3.
North Carolina	Errors in punctuation and capitalization; "the" omitted before "Executive", Section 2;

	"and" for "or" between "aid" and "comfort", Section 3.
Louisiana	Errors in punctuation and capitalization; "be as" for "bear" after "shall", Section 2.
South Carolina	Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted after "representation", Section 2; "such" for "male" before "citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3; "the" inserted before "payment", Section 4.
Alabama	Errors in punctuation and capitalization; "Legislatures" for "Legislature", Section 2.
Georgia	Errors in punctuation and capitalization; "Section 1st" for "Section 1"; "Section 2d" for "Section 2"; Section 3d" for "Section 3"; "Section 4th" for "Section 4"; "Section 5th" for "Section 5"; "the" inserted before "citizens" where the latter word last appears in Section 1, but crossed out by pencil; "rendered" for "reduced", Section 2, but crossed through with pencil and "reduced" inserted in pencil; "and" for "or" between "aid" and

	"comfort", Section 3. In a second copy of the resolution on file in the Department "the" is not inserted before "citizens" as above indicated; there is no error in the word "reduced" in this second copy, Section 2, nor in the word "or" between "aid" and "comfort". In a third copy of the resolution filed in the Department, the sections are correctly indicated.
Virginia	Errors in punctuation and capitalization; "and" for "or" between "aid" and "comfort", Section 3; "and" for "or" between "insurrection" and "rebellion", Section 4; "or" for "and" between "obligations" and "claims", Section 4.
Mississippi	Errors in punctuation and capitalization; "way" omitted before "abridged" but inserted in blue pencil, Section 2; "crimes" for "crime", Section 2; "for" instead of "of" after "elector", Section 3, but inserted in blue pencil; "to" instead of "shall" before "have engaged", Section 3, but inserted in blue pencil; "jeld" omitted before "illegal", Section 4, but inserted in blue pencil.

Texas	Errors in punctuation and capitalization; "or under any State" omitted, Section 3.

At the time the 14th Amendment was adopted, there were thirty-seven states in the Union, therefore twenty-eight were necessary to make up the required three-fourths necessary to ratify an amendment to the Constitution. The first thirty states above mentioned were all included in the declaration of the Secretary of State announcing the adoption of the 14th amendment. The three latter states were not included in that declaration.

It will be observed that there were many substantial errors of wording in the resolutions of the state legislatures upon which the Secretary of State acted in issuing his declaration announcing the adoption and the ratification by the states of the 14th amendment to the Constitution. As, by announcing the ratification of the 14th amendment the Executive Branch of the Government ruled that these errors were immaterial to the adoption of the amendment, and further as this amendment has been repeatedly before the courts, and has been by them enforced, it is clear that the procedure in ratifying that amendment constitutes on this point a precedent which may be properly followed in proclaiming the adoption of the present amendment, -that is to say, that the Secretary of State may disregard the errors contained in the certified copies of the resolutions of legislatures acting affirmatively on the proposed amendment.

It should, moreover, be observed that it seems clearly to have been the intention of the legislature in

each and every case to accept and ratify the 16th amendment as proposed by Congress. Again, the incorporation of the terms of the proposed amendment in the ratifying resolution seems in every case merely to have been by way of recitation. In no case has any legislature signified in any way its deliberate intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

Furthermore, under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. It, therefore, seems a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. Moreover, it could not be presumed that by a mere change of wording probably inadvertent, the legislature had intended to reject the amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. For these reasons it is believed that the Secretary of State should in the present instance include in his declaration announcing the adoption of the 16th amendment to the Constitution the States referred to notwithstanding it appears that errors exist in the certified copies of Resolutions passed by

the Legislatures of those States ratifying such amendment.

The Department has not received a copy of the Resolution passed by the State of Minnesota, but the Secretary of the Governor of that State has officially notified the Department that the Legislature of the State has ratified the proposed 16th amendment. It is believed that this meets fully the requirement with reference to the receipt of "official notice" contained in Section 205 Revised Statutes, and that Minnesota should be numbered with the States ratifying the aforesaid amendment.

It it recommended, therefore, that the Secretary issue his declaration announcing the adoption of the 16th amendment to the Constitution.

PDR/JBB/JHP.

O.K.
/s/ []

/s/ PDR

PHILANDER C. KNOX,

Secretary of State of the United States of America.

To all to Whom these Presents may come, Greeting:

Know Ye that, the Congress of the United States at the first Session, sixty-first Congress, in the year one thousand nine hundred and nine, passed a Resolution in the words and figures following: to wit --

"JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

'Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'"

And, further, that it appears from official documents on file in this Department that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Alabama, Kentucky,

South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming, in all thirty-six.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitute three-fourths of the whole number of States in the United States.

And, ,further, that it appears from official documents on file in this Department that the Legislatures of New Jersey and New Mexico have passed Resolutions ratifying the said proposed Amendment.

Now therefore, be it known that I, Philander C. Knox, Secretary of State of the United States, by virtue and in pursuance of Section 205 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-fifth day of February in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of

the United States of America the one hundred and thirty-seventh.

/s/ Philander C. Knox

SENATE JOINT AND CONCURRENT RESOLUTION

A joint and concurrent resolution of the house and senate ratifying the proposed amendment to the Constitution of the United States, submitted by the sixty-first Congress:

WHEREAS, the congress of the United States, at the session thereof begun and holden in the city of Washington on Monday, the fifteenth day of March, A. D. nineteen hundred and nine, did propose in the manner and form provided in the Constitution, as an amendment to the Constitution of the United States the following:

Article XVI. The congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration, and did submit the same to the legislatures of the several states for ratification;

Therefore, be it resolved, by the senate and the house of representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further

Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the president of the senate and the speaker of the house to the secretary of state at Washington.

We Hereby Certify *that the above Joint and Concurrent Resolution ratifying an amendment to the Constitution for a tax on incomes was adopted on March seventh, A. D. 1911, by the Senate of the Forty-sixth General Assembly of the State of Missouri, and on March sixteenth, A. D. 1911, by the House of Representatives of the Forty-sixth General Assembly of the State of Missouri, and in compliance with said resolution same is hereby transmitted.*

Witness *our hands at Jefferson City, Missouri, this the twentieth day of March, A. D. 1911, during the session of said General Assembly.*

ATTEST:

/s/ _____
Secretary of the Senate.

/s/ _____
President of the Senate.

ATTEST:

/s/ _____
Chief Clerk of the House of Representatives.

/s/ _____
Speaker of the House of Representatives.

STATE OF OKLAHOMA
DEPARTMENT OF STATE
OKLAHOMA CITY

BENJAMIN F. HARRISON
SECRETARY

HUGH L. HARRELL
ASS'T SECRETARY

[Great Seal of the State of Oklahoma - 1907]

February 26, 1912.

Honorable P. C. Knox,
Secretary of State,
Washington, D. C.

Sir:--

The information has reached me that no notice has ever been filed in your office as to the ratification of the Amendment to the United States Constitution providing for Income Tax, by our Legislature.

I am forwarding you herewith certified copy of the Resolution.

Very respectfully,

/s/ Benjamin F. Harrison
Secretary of State.

bfh-w

STATE OF OKLAHOMA
DEPARTMENT OF STATE

[Great Seal of the State of Oklahoma - 1907]

Benjamin F. Harrison Secretary of State

To all to whom these Presents Shall Come, Greeting:

I BENJAMIN F. HARRISON, *Secretary of State of the State of Oklahoma do hereby certify that the following and hereto attached is a true copy of*

HOUSE JOINT RESOLUTION NO. 5,

APPROVED :

March 14th., 1910.

the original of which is now on file and a matter of record in this office

In Testimony Whereof, *I hereto set my hand and cause to be affixed the great Seal of State*

Done at the City of Oklahoma this twenty-sixth *day of* February *A.D. 19*12.

/s/ Benjamin F. Harrison
SECRETARY OF STATE

MAR. 10, 1910.

HOUSE JOINT RESOLUTION NO. 5.

A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA.

WHEREAS; the Sixty-first Congress of the United States of America at its first session begun and held at the City of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows to-wit:

"Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled two-thirds of each house concurring therein, that the following article is proposed as an amensment to the constitution of the United States, which, when ratified by the Legislatures, of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:-

ARTICLE 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source

derived, without apportionment among the several states, and from any census or enumeration.

Now Therefore, Be it Resolved by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recomended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

Ben F. Wilson
SPEAKER OF THE HOUSE OF REPRESENTATIVES.

J. C. Graham
PRESIDENT PRO TEMPORE OF THE SENATE.

Correctly enrolled,
Milton Bryan, Chairman.

Approved Mch 14th 1910.

C. N. Haskell
GOVERNOR OF THE STATE OF OKLAHOMA.

APPENDIX E

Doc 303-8

[Seal of the Secretary of State Missouri]

STATE of MISSOURI
JAMES C. KIRKPATRICK, Secretary of State

To all to Whom these Presents shall Come:

I, *James C. Kirkpatrick, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of* Senate Joint and Concurrent Resolution No. 8 ratifying the proposed amendment to the Constitution of the United States submitted by the Sixty-first Congress, 1911, *as the same appears on file and of record in this office.*

In Testimony Whereof, *I hereunto set my hand and affix the* Great Seal *of the State of Missouri, Done at the City of Jefferson,* this Seventeenth day of December *A.D., Nineteen Hundred and* Eighty-Four.

[SEAL]

/s/ James C. Kirkpatrick
SECRETARY OF STATE

240a

ORIGINAL HOUSE & SENATE JOINT & CONCURRENT RESOLUTIONS 46TH GENERAL ASSEMBLY

1911-12

BILL NOS.
1-15
INCLUSIVE

[] – A joint and concurrent resolution of the House and Senate ratifying the proposed amendment to the Constitution of the United States, submitted by the Sixty-first Congress.

Read 1st time 2/15/11 *and* 400 *copies ordered printed*

/s/R.J. McClintic
Secretary

Read 2nd time 2/21/11 *and referred to the Committee on* Ways & Means

/s/R.J. McClintic
Secretary

Reported from the Committee on Ways & Means 2/22/11 *with recommendation that the bill* do pass
/s/R.J. McClintic
Secretary

Introduced by McAllister.

[]
Reported from [] on Engrossed Bills 3/3/11 as truly engrossed [] printed

RJMcClintic

Taken up 3/7/11. Read 3d time and passes. Title agreed to Motion to reconsider vote by which resolution passed tabled.

RJ. McClintic, sec.

JOINT AND CONCURRENT RESOLUTION

A joint and concurrent resolution of the house and senate ratifying the proposed amendment to the Constitution of the United States, submitted by the Sixty-first Congress.

WHEREAS, the Congress of the United States, at the session thereof begun and holden in the city of Washington on Monday, the fifteenth day of March A.D. nineteen hundred and nine, did propose in the manner and form provided in the Constitution, as an amendment to the Constitution of the United States the following:

ARTICLE XVI. The congress shall have power to ~~lay~~ levy and collect taxes on incomes, from whatever ~~source~~ derived, without apportionment among the several states, and without regard to any census or enumeration, and did submit the same to the legislatures of the several states for ratification;

Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further,

Resolved, that a duly attested copy of this resolution, together with proper evidence of this adoption be given transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington.

Handwritten Resolutions

[Fold-Out Exhibit, see next 2 pages]

Senate

Introduced Mch

Jan 3/11. Read 2 time
and passed. Title agreed
to. Motion to reconsider
rote laid on table
Senate Enrolled
J. F. McClintic Sec

Reported from the Senate Mch 7, 1911
as having passed. J. Kelly Pool
Chief Clerk

Read 1st time Mch 9, 1911
Kelly Pool
Chief Clerk

Read 2nd Time Mch 10, 1911
and referred to the Committee on
Ways & Means
J. Kelly Pool
Chief Clerk

Reported from the Committee
on Ways and Means March 16, 1911
recommending that the bill
do pass
Kelly Pool
Chief Clerk

Taken up Mch 16, 1911. Senate
Joint and Concurrent Resolution
No 8 substituted for House
Joint and Concurrent Resolution
No 16. and 3rd time and
duly passed. Title agreed to
Motion to reconsider laid by
which bill passed tabled
Kelly Pool
Chief Clerk

House Joint Resolution
No 16 introduced and
read 1st time
R. D. McClintic Sec

House Joint Resolution
No 16 Senate Substitute
Senate Joint and Concurrent Resolution
No 8 Submitted by Mr Sisty
First Congress

Read 1st time 2-15-1911 and 4
copies ordered printed
R. D. McClintic Secretary

Read 2nd time 2-21-1911 and referred to
the Committee on Ways & Means
R. D. McClintic Secretary

Reported from the Committee on
Ways and Means 2-22-1911 with the
recommendation that the bill
do pass R. D. McClintic Secretary

Ordered engrossed 3rd printed
2-22-1911 R. D. McClintic Secretary

Introduced by Senator McClintic

EXHIBIT D Page 5

(1) 2 of 5 P.D.

Page 3 of 5 Joint Resolution
is in 3 sections. All
sections shall be read
at length and signed
in the Presence of
the Senate. A Motion
to be made to reconsider
the Vote by which
the Resolution
is passed to be laid
upon the table
R. D. McClintic Sec

(Copy reduced to original)

BEST AVAILABLE COPY

Joint and Concurrent Resolution

A Joint and Concurrent Resolution of the House and Senate ratifying the proposed Amendment to the Constitution of the United States, submitted by the Fifty-first Congress.

Whereas, the Congress of the United States, at the session thereof begun and holden in the City of Washington on Monday, the fifteenth day of March, A.D. One thousand hundred and nineteen, did propose in the manner provided in the Constitution, to an Amendment to the Constitution of the United States the following

Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration, and did submit the same to the Legislatures of the several States for ratification;

Therefore, be it resolved, by the Senate and the House of Representatives, that the Legislature of the State of Missouri does hereby ratify and assent to said Amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further,

Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the House to the Secretary of State at Washington.

(Copy received

APPENDIX F

Doc 303-12

APOSTILLE

(Convention de La Haye du 5 Octobre 1961)

1. Country: United States of America
   This public document

2. Has been signed by Mary Ann Watts

3. Acting in the capacity of Notary Public for Oklahoma County, Oklahoma

4. Bears the seal/stamp of Mary Ann Watts

CERTIFIED

5. At Oklahoma City, Oklahoma, U.S.A.

6. The 18th day of December, 1984

7. By Esta M. Phipps, Assistant Secretary of State

8. No. A-328

9. Seal/stamp of the State of Oklahoma

10. Signature:

/s/ Esta M. Phipps

ASSISTANT SECRETARY OF STATE

[Great Seal of the State of Oklahoma - 1907]

THE OKLAHOMA DEPARTMENT OF LIBRARIES

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Allen Wright
Memorial Library Building

December 18, 1984

This is to certify that the attached pages are a true and correct copy of the materials printed and published in the Journal of the House of Representatives of the Extraordinary Session of the Second Legislature of the State of Oklahoma for the year of 1910.

Signed

/s/ Oliver Delaney
Oliver Delaney, Head
Legislative Reference

Acknowledged before me this 18th day of December 1984.

/s/ Mary Ann Watts
NOTARY PUBLIC

My Commission expires 2-29-88

JOURNAL

of the

House of Representatives

of the

EXTRAORDINARY SESSION

of the

Second Legislature of the State of Oklahoma

[Great Seal of the State of Oklahoma - 1907]

Session Opened January 20, 1910
Session Closed March 19, 1910

59 Days

1910
LEADER PRINTING CO.
GUTHRIE, OKLA

[p.234]

HOUSE JOURNAL

STATE OF OKLAHOMA
EXECUTIVE DEPARTMENT.
GUTHRIE.

February 10, 1910.

TO THE HONORABLE LEGISLATURE, STATE OF OKLAHOMA. IN EXTRAORDINARY SESSION; ELEVENTH MESSAGE.

I submit to you for your consideration, approval or rejection, an amendment to the Constitution of the United States, relating to the income tax. A copy of the communication from the Secretary of State of the United States is herewith attached.

After careful consideration of this subject I find it possible of the accomplishment of much good, as well as capable of undesirable results, and in approving this amendment the people of the States must do so with their eyes open, realizing that it vests the Congress of the United States with power for evil as well as good results, depending upon the will of the Congress from time to time.

It is therefore a question upon which you must be the judges of the creation of such additional legislative power in the Congress of the United States.

ORPHANS' HOME AND JAILS

At the request of the State Commissioner of Charities I submit to your Honorable Body the consideration and enactment of such law as you may

deem proper, providing for the further regulation of the State Orphan's Home and Jails of the state.

SUPERIOR COURT.

At the request of numerous of your members, I submit for your consideration such amendment as you may deem proper to the existing law creating Superior Courts as you may deem proper reducing the requisite population therefor.

MUNICIPAL BONDS.

I authorize your consideration of the enactment of a law providing for protection and validation, sale and other necessary provisions, relating to bonds and counties, school districts, towns, cities and other subdivisions.

SUPREME COURT CLERK.

At the request of numerous of your members, I submit for your consideration the enactment of a separate law providing for the salary of the Clerk of the Supreme Court, and for such subordinate assistants as said office may, in your judgment require, and for the compensation of all thereof, and the incidental expense of said office.

MINOR OFFICERS.

In connection with your county officers' fee and salary bill, or [p.235] independent thereof if you may deem proper, I submit for your consideration the enactment of a law relating to the fees and salaries of court bailiffs, jury commissioners, jurors, witnesses,

appraisers, and county superintendents of health, and court stenographers and notaries public.

Respectfully submitted,
C. N. HASKELL, Governor.

SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA AT THE FIRST SESSION.

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION.

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

J. C. CANNON,
Speaker of the House of Representatives.
J. S. SHERMAN,
Vice-President of the United States, and
President of the Senate.

Attest:
A. McDOWELL
Clerk of the House of Representatives.
CHARLES G. BENNETT,
Secretary.
By HENRY H. GILFRY,
Chief Clerk.

* * *

[p.324]

elections, we have overlooked a practice in influencing elections that is heinous in its character and should be absolutely prohibited by law and its violation severely punished. It is a common practice for those engaged in the sale of whisky and other intoxicants and those who profit by the conduct of houses of ill fame and who profit by gambling to contribute large sums of money to influence the election of local officers. This practice is a disgrace to any State or community where it is practised and I appeal to you to enact proper legislation to prevent its continuance.

I am aware that my own suggestion, as well as the suggestion of many of your members, we have placed a large number of subjects before your Honorable body for consideration and as it is the desire expressed to me by many of your members that this session should consider only such things as are of immediate necessity, I therefore suggest that unless you deem some other subject of immediate importance, that there will probably be nothing more submitted to your Honorable body by me.

Respectfully submitted,
C. N. HASKELL, Governor.

The following conference report was read, and, on motion by Mr. Jones, adopted:

Guthrie, Okla., February 9, 1910.

MR. PRESIDENT:

We, your Conference Committee to whom was referred House Bill No. 8, having had same under consideration, beg leave to report back with the recommendation that the House agree to the Senate amendment with a further amendment in line two of Section One as follows:

Strike out the word "assessors" and insert in lieu thereof the words "Trustees, city and town assessors."

Senate Committee: Blair, Eggerman, Cunningham.

House Committee: Anthony, Casteel, Boyle.

The question being "shall the bill, as amended in accordance with conference report pass," roll call resulted as follows:

Ayes: Acton, Anthony, Ashby, Boyle, Bridges, Bryan, Butts, Calhoun, Carson, Casteel, Clark, Cook, Cope, Coyne, Dixon, Dunn, Durant, Durham, Earle, Ewell, Faulkner, Gilmer, Glover, Harrison, Haymes, Heim, Huddleston, Hughes, Humphreys, Hutchin, Ireton, Jacobs, Jahn, Japp, Jones, King, Knox, Lewis, Lockwood, Lovelace, McDuffee, Maris, Maxey, Merrick, Millsaps, Moore (of Johnston), Moore (of Washington), Murphy, Partridge, Paschal, Porter, Ratcliff, Ratliff (of Johnson), Ratliff (of Pontotoc), Reeve, Rider, Rogers, Ross, Rotenberry, Savage (of Greer), Semple, Sexton, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of [p. 325] Grant), Sullivan, Tate, Tooley, Tucker, Turner, Utterback, Wallace, Ward, Watrous, Whitson, Williams, Wilson (of Greer), Wortman, Mr. Speaker (B. F. Wilson). Total, 80.

Nays — None.

Absent: Anderson, Bell, Bonar, Brownlee, Burnette, Charles, Compton, Covey, Edington, Hamlin, Howe, Johnston, Lincoln, McElhaney, Mathies, Parsons, Price, Putnam, Savage (of Jefferson), Shearer, Sherman, Simmons, Stull, Terral, Tillotson, Vogle, Whayne, White. Total, 28.

The Speaker declared House Bill No. 8, as amended, duly passed.

Mr. Faulkner moved that when the House do adjourn, it adjourn until ten o'clock, in the morning, Tuesday, February 22, 1910.

Mr. Ross moved to amend this motion to adjourn until 9:30 o'clock, A. M., Tuesday, February 22nd.

Amendment was lost.

Original motion was adopted.

The following bills were introduced and read first time:

House Bill No. 151, by Mr. Cope, entitled: "An Act amending Section 5952, of the Statutes of Oklahoma, 1890, the same being Section 7128 of the Compiled Laws of Oklahoma, 1909."

House Joint Resolution No. 5, by Messrs. Wortman and Terral, relating to ratifying a proposed amendment to the Constitution of the United States providing for the laying and collecting of taxes on incomes.

On motion by Mr. Gilmer, House adjourned until ten o'clock A. M., Tuesday, February 22, 1910.

APPENDIX G

Doc 303-13

HOUSE JOURNAL

[p.340]

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared the enrolled copy of House Bill No. 92 with the engrossed copy thereof and find said enrollment to be correct and in proper form and it is herewith transmitted to you for your signature.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 113 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

Petition by Mr. Earle, relating to practice of medicine, was read and referred to Committee on Health, Sanitation and Medicine.

Petition by Mr. Earle, favoring passage of House Bill No. 59, read and referred to Committee on Judiciary and Judicial Departments.

Petition by Mr. Mathies, protesting against changing boundary of the Fifth Judicial District, was read and referred to Committee on Judiciary and Judicial Departments.

The following bills were read second time, and referred to Committees as indicated:

House Bill No. 151, by Mr. Cope, to Committee on Criminal Jurisprudence.

House Bill No. 152, by Mr. Durant, (by request), to Committee on Elections.

House Bill No. 153, by Mr. Durant, (by request), to Committee on Labor and Arbitration.

Senate Bill. No. 61, by Mr. Taylor, to Committee on Elections.

House Joint Resolution No. 5, by Messrs. Wortman and Terral, to Committee on Criminal Jurisprudence.

House Joint Resolution No. 6, by Messrs. Faulkner and Casteel, to Committee on Rules.

On motion by Mr. Wilson (of Canadian), clerk was instructed to inquire of the Senate the status of House Bill No. 42, which was transmitted to the Senate on February 4th.

On motion by Mr. Jones, special county court bills were made special order for immediate consideration.

House Bill No. 114, by Mr. Boyle, was read and considered.

On motion by Mr. Boyle, Section 8 was stricken from the bill, and the following substituted in lieu thereof:

[p.341]

"An emergency is hereby declared to exist by reason whereof it is necessary for the immediate preservation of the public peace, health and safety that this Act be

in force and effect from and after its passage and approval."

On motion by Mr. Anthony, House Bill No. 114 was ordered engrossed, placed on third reading and final passage.

House Bill No. 132, by Mr. Tucker, was read and considered, and on motion by Mr. Jones was ordered engrossed and placed on third reading and final passage.

House Bill No. 146, by Mr. Jacobs, was read and considered.

On motion by Mr. Jones, Committee amendments were adopted.

On motion by Mr. Jones, House Bill No. 146 was ordered engrossed, and placed on third reading and final passage.

House Bill No. 124, by Mr. Sullivan, was read and considered.

On motion by Mr. Mathies, the following amendment was adopted as a substitute for House Bill No. 124:

"Be it Enacted by the People of the State of Oklahoma:

"Section I. The County Commissioners of any county in the State having two county court towns and having only one county court clerk, may, in their discretion, appoint an additional clerk of county court, at a salary not to exceed $600.00 per annum. Said clerk to exercise the same powers as other clerks of county courts."

On motion by Mr. Jones, the words "and declaring an emergency" were stricken out of the title of the bill.

On motion by Mr. Tillotson, the title of the House Bill No. 124 was amended to read as follows: "An Act to provide for the appointment of clerks of county courts."

On motion by Mr. Jones, House Bill No. 124 was ordered engrossed and placed on third reading and final passage.

House Bill No. 138, by Mr. Huddleston, was read and considered, and on motion by Mr. Jones, was ordered engrossed and placed on third reading and final passage.

House Bill No. 115, by Mr. Anthony, was read and considered.

On motion by Mr. Anthony, the Committee amendments were adopted.

On motion by Mr. Durant, House Bill No. 115 was ordered engrossed and placed on third reading and final passage.

House Bill No. 148, by Mr. Hughes, was read and considered and on motion by Mr. Jones was ordered engrossed and placed on third reading and final passage.

House Bill No. 116, by Messrs. Bryan and Charles, was read and considered.

On motion by Mr. Bryan, the following amendment was adopted:

Add at the end of the Section I, the following: "His successors

* * *

[p.392]

MR. SPEAKER:

We your Committee on Criminal Jurisprudence, to whom was referred House Bill No. 110, by Heim, entitled: An Act prescribing the duties of mayors, police judges, magistrates, sheriffs, constables, marshals, police officers, etc., beg leave to report that we have had the same under consideration and

herewith return the same with the recommendation that it do not pass.

TERRAL, Chairman.

MR. SPEAKER:

We, your Committee on Constitutional Amendments, to whom was referred House Joint Resolution No. 2, by Bryan, entitled: Proposing an amendment to the Constitution of the State of Oklahoma, beg leave to report that we have had the same under consideration and herewith return the same with the recommendation that it do pass with the following amendments:

Strike out the words "seven years" at the end of the resolution.

Strike our the words "seven years after the completion of such reclamation" and insert "ten years after the date of acquiring title."

MR. SPEAKER:

We your Committee on Criminal Jurisprudence, to whom was referred House Joint Resolution No. 5, by Wortman and Terral, entitled: A Resolution ratifying a proposed amendment to the Constitution of the United States providing for the levying and collecting of income: beg to leave to report that we have had the same under consideration and herewith return the same with the recommendation that it do pass.

TERRAL, Chairman.

MR. SPEAKER:

We, your Committee on House Expenses and Public Accounts to whom was referred Senate Concurrent Resolution No. 13, by Memminger, beg leave to report that we have had the same under consideration and

herewith return the same with the recommendation that it do pass.

HUTCHIN, Chairman.

Hon. W. C. Hughes, of Oklahoma City, a member of the Constitutional Convention, was invited to the Speaker's stand.

Mr. Tillotson moved that when the House recessed, that it recess until 1:30.

Adopted.

On motion by Mr. Tillotson, Senate Bill No. 61 was made special order for consideration at 1:30 o'clock.

[p.393]

The following bills were read the second time and referred to committees as indicated.

House Bill No. 156, by Mr. Lovelace, to Committee on Judiciary and Judicial Departments.

House Concurrent Resolution No. 11, by Messrs. Glover and Maxey, to Committee on Judiciary and Judicial Departments.

Senate Bill No. 17, by Mr. Smith of the Senate and Mr. Durham of the House, to Committee on Fees and Salaries.

Senate Bill No. 80, by Senate Committee on School Lands, to Committee on General Appropriations.

Senate Bill No. 60, by Mr. Taylor, to Committee on Public Service Corporations.

Senate Bill No. 81 by Messrs. Taylor and Eggerman, to Committee on Health, Sanitation and Practice of Medicine.

Senate Bill No. 67, by Mr. Wynne, to Committee on Education.

Senate Bill No. 74, by Mr. Taylor, to Committee on Charities and Corrections.

Senate Bill No. 64, by Mr. Memminger, to Committee on Judiciary and Judicial Departments.

Senate Concurrent Resolution No. 13, by Mr. Memminger was read third time and roll call had thereon resulted as follows:

Ayes: Anthony, Ashby, Bonar, Boyle, Bryan, Carson, Casteel, Cope, Coyne, Dunn, Durant, Durham, Earle, Ewell, Faulkner, Gilmer, Glover, Harrison, Haymes, Huddleston, Hughes, Hutchin, Ireton, Jahn, Japp, Johnson, King, Lewis, Lovelace, McDuffee, McElhaney, Mathies, Maxey, Moore (of Johnson), Paschal, Ratcliff, Ratliff (of Johnston), Reeve, Rider, Ross, Rogers, Rotenberry, Savage (of Greer), Savage (of Jefferson, Semple, Smith (of Delaware), Smith (of Giant), Terral, Tillotson, Tucker, Turner, Wallace, Whayne, Whitson, Williams, Wortman, Mr. Speaker (Ben F. Wilson). Total – 57.

Nays: Acton, Brownlee, Charles, Covey, Edington, Howe, Jones, Knox, Lincoln, Lockwood, Maris, Merrick, Moore (of Washington), Murphy, Partridge, Porter, Sexton, Shearer, Sherman, Simmons, Stull, Tate, Tooley, Utterback, Vogle, Ward. Total – 26.

Absent: Anderson, Bell, Bridges, Burnette, Butts, Calhoun, Clark, Compton, Cook, Dixon, Hamlin, Heim, Humphreys, Jacobs, Millsaps, Parson, Price, Putnam, Ratliff (of Pontotoc), Smith (of Caddo), Smith (of Custer), Sullivan, Watrous, White, Wilson (of Greer). Total – 25.

The Speaker declared Senate Concurrent Resolution No. 13, having received the constitutional majority, had duly passed, and signed same in open session.

Mr. Durant moved that House resolve itself into Committee of

* * *

[p.456]

Maris, Mathies, Merrick, Millsaps, Moore (of Johnston), Moore (of Washington), Murphy, Paschal, Price, Ratliff (of Johnston), Ratliff (of Pontotoc), Rider, Rogers, Ross, Rotenberry, Sexton, Shearer, Sherman, Smith (of Custer), Smith (of Delaware), Stull, Sullivan, Tate, Terral, Tooley, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whitson, Williams, Wortman, Mr. Speaker (Ben F. Wilson). Total–75.

Nays: Durham, King. Total–2.

Absent: Bell, Bonar, Brownlee, Bryan, Butts, Calhoun, Compton, Cope, Edington, Gilmer, Hamlin, Howe, Lincoln, Lockwood, Maxey, Parsons, Partridge, Porter, Putnam, Ratliff, Reeve, Savage (of Greer), Savage (of Jefferson), Semple, Simmons, Smith (of Caddo), Smith (of Grant), Tillotson, Whayne, White, Wilson (of Greer). Total – 31.

Mr. Speaker declared the motion duly carried.

Senate amendments to House Bill No. 14 were read.

Mr. Anthony moved that the House do not agree to Senate amendments to House Bill No. 14, and ask the Senate to recede from their amendments.

Carried.

On motion by Mr. Lovelace, the House resolved itself into Committee of the Whole to consider House Bills on the Calendar, with, Mr. Johnson presiding.

Mr. Speaker pro tempore resumed the chair.

The following report was read and adopted:

MR. SPEAKER

The committee of the Whole House, to whom was referred House Bill No. 59, by Mr. Earle; Committee Substitute for House Bill No. 126, by Mr. Burnette, and No. 128 by Mr. Japp; House Bills Nos. 130, by Mr.

Maxey; No. 131, by Mr. Maxey; No. 139, by Mr. Wallace; No. 145, by Mr. Glover; No. 112, by Mr. Wortman; No. 141, by Mr. Tillotson; No. 37, by Mr. Ross; No. 147, by Mr. Haymes, House Joint Resolution No. 5, by Messrs. Wortman and Terral; House Bills Nos. 164, by Messrs. Burnette, et al; 144, by Mr. Ashby; 122, by Mr. Japp; 159, by Mr. Ross, and 161, by Mr. Cope, report that we have considered same, and recommend that House Bill No. 59 be referred back to Committee on Criminal Jurisprudence; that Committee Substitute for House Bills Nos. 126 and 128 do not pass; that House Bill No. 130 do not pass; that House Bill No. 131 do not pass; that House Bill No. 139, be made Special Order for Monday at 2 o'clock P. M.; that House Bill No. 145 do pass as amended; that House Bill No. 112 do not pass; that House [p.457] Bill No. 141 do pass; that House Bill No. 37 be made Special Order for Monday at 2 P. M.; that House Bill No. 147 do pass; that House Joint Resolution No. 5 do pass; that House Bill No. 164 do pass; that House Bill No. 144 do pass; that House Bill No. 122 do not pass; that House Bill No. 159 do pass as amended; that House Bill No. 161 do pass.

JOHNSON, Chairman.

On motion by Mr. Tillotson, all bills recomended favorably by the two Committees of, the Whole House were ordered engrossed, and placed on third reading and final passage.

Messenger arrived from the Senate bearing the following messages, which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives that the Senate declines

to recede from its amendments to House Bill No. 14, by Anthony, and asks for a conference, Senators Blair, Strain and Thomas have been appointed to confer with a similar committee from the House.

FINLEY, Secretary

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the signing by the President Pro Tempore of the Senate of the following: Senate Bill No. 61 and House Concurrent Resolution No. 10, which are herewith transmitted to your Honorable body for signature of Speaker.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bill No. 112, by Russell, engrossed copy of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bills Nos. 69, by Blair; 90, by Cordell; 98, by Roddie, and 82, by Taylor, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

The Speaker signed enrolled copy of Senate Bill No. 61, in open session, after being read at length.

House Journal for Wednesday, March 2, was corrected on page 16, to show Mr. Huddleston voting "aye," instead of absent.

* * *

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in proper form and it is herewith transmitted to you for your signature.

Respectfully submitted,
BRYAN, Chairman.

Messenger arrived from the Senate bearing the following messages, which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bill No.89, by Senate Committee on State and School Lands, which is herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: House Bill No. 109, by Heim; House Bill No. 85, by Anthony; Senate Concurrent Resolutions Nos. 23, by Graham, and 22, by Thomas, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the signing by the President Pro Tempore of the Senate of the following: Senate Concurrent Resolution No. 11, enrolled copy of which is herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

Mr. Tillotson moved that the House agree to Senate amendments to House Bill No. 85.

Roll call being had thereon resulted as follows:

Ayes: Anderson, Anthony, Ashby, Boyle, Bridges, Bryan, Burnette, Carson, Casteel, Charles, Clark, Cook, Cope, Coyne, Dunn, Durant, Durham, Earle, Ewell, Faulkner, Gilmer, Glover, Hamlin, Harrison, Haymes, Heim, Huddleston, Hughes, Hutchin, Ireton, Jacobs, Jahn, Jap, Johnson, Jones, King, Knox, Lewis, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Millsaps, Moore (of Johnston), Paschal, Price, Putnam, Ratcliff, Ratliff (of Pontotoc), Reeve, Rider, Ross, Rogers, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Shearer, Sherman, Simmons, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of Grant), Sullivan, Terral, Tillotson, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). [p.465] Total — 79.

Nays: Acton, Covey, Howe, Humphreys, Lockwood, Merrick, Murphy, Stull, Tate, Tooley. Total —10.

Absent: Bell, Bonar, Brownlee, Butts, Calhoun, Compton, Dixon, Edgington, Lincoln, Moore (of Washington), Parsons, Partridge, Porter, Ratliff (of

Johnston), Sexton, Whayne, White, Williams, Wilson (of Greer). Total – 19.

The Speaker declared House Bill No. 85, as amended by the Senate, had duly passed.

House Bill No. 109, as amended by the Senate, was read.

Mr. Tillotson moved that the House agree to the Senate amendments.

Mr. Moore (of Johnston) moved as a substitute that the House do not agree to the Senate amendments.

Mr. Tillotson moved that the motion by Mr. Moore (of Johnston) do lie on the table.

Carried.

Roll call being had on House Bill No. 109, as amended by the Senate, resulted as follows:

Ayes: Acton, Anderson, Anthony, Ahsby, Boyle, Bridges, Burnette, Carson, Casteel, Charles, Clark, Cook, Covey, CDoyne, Dixon, Durant, Durham, Earle, Ewell, Gilmer, Glover, Hamlin, Haymes, Heim, Howe, Huddleston, Hughes, Hutchin, Ireton, Jacobs, Jahn, Japp, Johnson, Jones, King, Knox, Lewis, Lockwood, Lovelace, McElhaney, Maris, Mathies, Maxey, Merrick, Murphy, Paschal, Price, Ratcliff, Ratliff (of Pontotoc), Reeve, Rider, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Sexton, Shearer, Sherman, Simmons, Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Tate, Terral, Tillotson, Tooley, Turner, Vogle, Wallace, Ward, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). Total –77.

Nays: Bryan, Edgington, Millsaps, Moore (of Johnston), Moore (of Washington), Tucker, Utterback. Total —7.

Absent: Bell, Bonar, Brownlee, Butts, Calhoun, Compton, Cope, Dunn, Faulkner, Harrison, Humphreys, Lincoln, McDuffee, Parsons, Partridge,

Porter, Putnam, Ratliff (of Johnson), Smith (of Caddo), Sullivan, Whayne, White, Williams, Wilson (of Greer). Total –24.

The Speaker declared that House Bill No. 109, as amended by the Senate, had duly passed.

Engrossed copy of House Joint Resolution No. 5 was read this time.

By unanimous consent, the name of Senator Graham was added as one of the authors of the resolution.

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The vote recurring on the adoption of House Joint Resolution No. 5 resulted as follows:

Ayes: Acton, Anderson, Anthony, Ashby, Boyle, Bryan, Burnette, Carson, Casteel, Charles, Clark, Cook, Cope, Covey, Coyne, Dixon, Dunn, Durant, Durham, Earles, Ewell, Faulkner, Gilmer, Glover, Hamlin, Harrison, Haymes, Heim, Howe, Huddleston, Hughes, Humphreys, Hutchin, Ireton, Jacobs, Japp, Johnson, Jones, King, Knox, Lewis, Lockwood, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Merrick, Millsaps, Moore (of Johnston), Moore (of Washington), Murphy, Paschal, Price, Putnam, Ratcliff, Ratliff (of Pontotoc), Reeve, Rider, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Sexton, Shearer, Sherman, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Sullivan, Tate, Terral, Tillotson, Tooley, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). Total —89.

Nays: Bridges, Edgington. Total—2.

Absent: Bell, Bonar, Brownlee, Butts, Calhoun, Compton, Jahn, Lincoln, Parsons, Partridge, Porter,

Ratliff (of Johnson), Simmons, Whayne, White, Williams, Wilson (of Greer). Total —17.

Mr. Speaker declared House Joint Resolution No. 5, having received the constitutional majority, had duly passed, and signed same in open session.

Enrolled copies of Senate Concurrent Resolution No. 11, House Bill No. 132 and House Bill No. 148 were signed by the Speaker in open session, after being read at length.

Engrossed copy of House Bill No. 140, by Mr. Durant, was read.

Mr. Durant moved as follows: That House Bill No. 140 be amended by deducting $111.45 from item of $3,633.92, making item read "$3,522.47."

Mr. Ross moved as follows: That House Bill No. 140 be recommitted to Committee on General Appropriations, with instructions to itemize the items of expense for printing.

Carried.

Engrossed copy of House Bill No. 164, by Mr. Burnette, was read, and roll had thereon resulted as follows:

Ayes: Acton, Anderson, Anthony, Ashby, Boyle, Bridges, Bryan, Burnette, Carson, Casteel, Charles, Clark, Cook, Cope, Covey, Coyne, Dixon, Dunn, Durant, Durham, Ewell, Gilmer, Glover, Heim, Howe, Huddleston, Hughes, Humphreys, Hutchin, Ireton, Jacobs, Japp, Johnson, Jones, Knox, Lockwood, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Merrick, Millsaps, Moore (of Johnston), [p.467] Moore (of Washington, Murphy, Paschal, Price, Putnam, Ratcliff, Ratliff (of Pontotoc), Reeve, Rider, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Shearer, Shearman, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Tate, Tillotson, Tucker, Turner,

Utterback, Vogle, Wallace, Ward, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). Total—79.

Nays: Earle, Edgington, Hamlin, King, Lewis, Terral. Total—6.

Absent: Bell, Bonar, Brownlee, Butts, Calhoun, Compton, Faulkner, Harrison, Haymes, Jahn, Lincoln, Parsons, Partridge, Porter, Ratliff (of Johnson), Sexton, Simmons, Sullivan, Tooley, Whayne, White, Williams, Wilson (of Greer). Total—23.

The vote recurring on the emergency clause, resulted as follows:

Ayes: Acton, Anderson, Anthony, Ashby, Boyle, Bridges, Bryan, Burnette, Carson, Casteel, Charles, Clark, Cook, Cope, Covey, Coyne, Dixon, Dunn, Durant, Durham, Ewell, Gilmer, Glover, Heim, Howe, Huddleston, Hughes, Humphreys, Hutchin, Ireton, Jacobs, Japp, Johnson, Jones, Knox, Lockwood, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Merrick, Millsaps, Moore (of Johnston), Moore (of Washington), Murphy, Paschal, Price, Putnam, Ratcliff, Ratliff (of Pontotoc), Reeve, Rider, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Shearer, Sherman, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Tate, Tillotson, Tucker, Turner, Utterback, Wallace, Ward, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). Total—78.

Nays: Earle, Edgington, Hamlin, King, Lewis, Terral, Vogle. Total—7.

Absent: Bell, Bonar, Brownlee, Butts, Calhoun, Compton, Faulkner, Harrison, Haymes, Jahn, Lincoln, Parsons, Partridge, Porter, Ratliff (of Johnston), Sexton, Simmons, Sullivan, Tooley, Whayne, White, Williams, Wilson (of Greer). Total 23.

The Speaker declared that House Bill No. 164, with the emergency clause, having received the

constitutional majorities, had duly passed, and signed same in open session.

Mr. Anthony moved that when the House adjourned for today that it adjourn until Saturday morning, at 9:30 o'clock, March 5.

Carried.

Mr. Wortman moved that Senate Bill No. 29 be made special order for consideration of the House immediately after convening for the afternoon session.

On motion by Mr. Dunn, motion by Mr. Wortman was tabled.

* * *

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HOUSE BILL NO. 176—BY MESSRS. SAVAGE (of Greer) AND LOVELACE.

Entitled: "A Bill entitled: An Act setting aside and apportioning the incomes and rentals now in the hands of the Treasurer of the State of Oklahoma and derived from the leasing of certain lands belonging to the State and the setting aside and apportioning the income and rentals to be hereafter derived from the leasing of certain lands belonging to the State of Oklahoma to the use and benefit and for the support and maintenance of the several consolidated school districts now in existence or to be hereafter established in the various counties of the State of Oklahoma."

HOUSE BILL NO. 177—BY MR. HUDDLESTON.

Entitled: "An Act to provide for the division of Pontotoc County into two county court districts, designating court towns, terms of court, and

classes of cases to be tried in each district, and declaring an emergency."

SENATE BILL NO. 89—BY SENATE COMMITTEE ON STATE AND SCHOOL LANDS.

Entitled: "An Act making an appropriation to the Commissioners of the Land Office, for the fractional part of the fiscal year of 1910, and the fiscal year of 1911, for the purpose of paying salaries of employees and expenses in management of the Permanent Common School Fund, and selling of certain lands and declaring an emergency."

SENATE BILL NO. 95—BY MESSRS. STRAIN AND GOULDING.

Entitled: "An Act providing for appeals from the action of Boards of Equalization."

SENATE CONCURRENT RESOLUTION NO. 20—BY MR. LANDRUM.

Memorializing Congress on the passage of a bill relating to the title of lands inherited by minor heirs of Indian allottees, etc.

SENATE CONCURRENT RESOLUTION NO. 22—BY MR. THOMAS.

Providing for the discharge of the Code Commission, and for the delivery of all the work of same, together with all notes and data relative thereto, to the Secretary of State, to be by him preserved.

SENATE CONCURRENT RESOLUTION NO. 23—BY MR. GRAHAM.

Ratifying a proposed amendment to the Constitution of the [p.475] United States of America, relating to income tax, and designated as Article XVI,

read and referred to Committee on Judiciary and Judicial Departments.

On motion by Mr. Tillotson, House adjourned until 9:30 o'clock, Saturday morning, March 5.

* * *

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Quorum present.

Messenger arrived from the Senate, bearing the following messages which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the signing of President Pro Tempore of the Senate of the following Substitute for Senate Concurrent Resolution 9, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the signing by President Pro Tempore of the Senate of the following House Bill No. 123, and House Bill No. 146, (enrolled bills), which are herewith transmitted to your Honorable body.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bill No. 110, by Taylor, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives for the second time that the Senate has adopted the conference reports on House Bills Nos. 14 and 84, by Anthony, and passed the said bills as so amended.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you through you the House of Representatives, of the status of House Bills in the Senate as follows:

The following bills are under the head of "General Orders."

House Bill No. 104, by Japp.

House Bill No. 91, by Simmons.

House Bill No. 102, by Jones.

House Bill No. 69, by Moore, Johnson, Glover and Millsaps.

House Bill No. 93, by Lovelace.

House Bill No. 18, by Wortman.

House Bill No. 27, by Hughes, and Anthony.

House Bill No. 107, by Whayne.

House Bill No. 60, by Japp.

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House Bill No. 116, by Bryan and Charles.

House Bill No. 118, by Durant and Ewell.

House Bill No. 156, by Lovelace.

House Bill No. 96, by Smith (of Caddo).

The following bills are in the hands of committees:

COMMITTEE ON APPROPRIATIONS:

House Bill No. 46, by Appropriation Committee.

House Bill No. 154, by Harrison.

JUDICIARY NO. 1:

House Bill No. 66, by Cope.

House Bill No. 73, by Rider,

JUDICIARY NO. 2:

House Bill No. 34, by Carson,

House Bill No. 164, by Burnette, Reeves and Smith.

House Bill No. 161, by Cope.

STATE AND COUNTY AFFAIRS:

House Bill No. 63, by Ross.

House Bill No. 115, by Anthony.

House Bill No. 145, by Glover.

House Bill No. 124, by Sullivan.

LEGAL ADVISORY:

House Bill No. 58, by Jahn and Burnette.

House Bill No. 160, by Ross.

H. J. R. No. 5, by Wortman and Terrell of the House and Graham of the Senate.

PUBLIC SERVICE CORPORATION:

House Bill No. 62, by Anthony.

PRIVILEGES AND ELECTION:

House Bill No. 125, by Bryan.

MUNICIPAL CORPORATIONS:

House Bill No. 147, by Haymes.

The following bills have been indefinitely postponed:

House Bill No. 103, by McDuffie and Savage.

House Bill No. 53, by Calhoun.

The following reported, "Do not pass:"
House Bill No. 42, by Wilson.
House Bill No. 57, by Casteel and Maxey.
House Bill No. 65, by Cope.
STEERING COMMITTEE:
H. J. R. 6 Faulkner and Casteel.

FINLEY, Secretary.

The Speaker signed enrolled copy of Committee Substitute for Senate Concurrent Resolution No. 9 in open session.

FIFTIETH DAY

House of Representatives

Thursday, March 10, 1910.

9:30 o'clock, a. m.

House convened pursuant to adjournment, Mr. Speaker, presiding.

Prayer by the Chaplain.

Roll call. All present, except: Brownlee, Butts, Calhoun, Compton, Hughes, Humphreys, Hutchin, Moore (of Johnston), Parsons, Partridge, Rider, Simmons, White.

On motion by Mr. Ratliff (of Johnston), Mr. Moore (of Johnston), was excused for absence for the remainder of the week on account of the death of his father.

On motion by Mr. Ratliff (of Johnston), the Speaker appointed the following committee to draft suitable resolutions of respect: Messrs. Ratliff (of Johnston), Jahn, and Merrick.

On motion by Mr. Jones, unanimously adopted, the vote by which House Bill No. 109, was passed, was reconsidered.

On motion by Mr. Jones, unanimously adopted, the word "less" in line 8, of Section 6, of enrolled House Bill No. 109, was changed to "more", making it read "not more than three hundred dollars."

House Bill No. 109, as amended, was placed on final passage, and roll call had thereon resulted as follows:

Ayes: Acton, Anderson, Anthony, Ashby, Bell, Bonar, Boyle, Bridges, Bryan, Burnette, Carson, Casteel, Charles, Clark, Cook, Cope, Covey, Coyne, Dixon, Dunn, Durant, Durham, Earle, Edgington, Ewell, Faulkner, Gilmer, Glover, Hamlin, Harrison, Haymes, Heim, Howe, Huddleston, Ireton, Jacobs, Jahn, Japp, Johnson, Jones, King, Knox, Lewis, Lincoln, Lockwood, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Merrick, Millsaps, Moore (of Washington), Murphy, Paschal, Porter, Price, Putnam, Ratcliff, Ratliff (of Johnston), Ratliff (of Pontotoc), Reeve, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Sexton, Shearer, Sherman, Smith (of Caddo,) Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Sullivan, Tate, Terral, Tillotson, Tooley, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whayne, Whitson, Williams, Wilson (of Greer), Wortman, Mr. Speaker (B. F. Wilson). Total—95.

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Nays: None.

Absent: Brownlee, Butts, Calhoun, Compton, Hughes, Humphreys, Hutchin, Moore (of Johnston), Parsons, Partridge, Rider, Simmons, White. Total—13.

House Concurrent Resolution No. 14, by Mr. Burnette, authorizing the State Librarian to furnish certain State Records to counties that have lost these records by the burning of court houses, was adopted and signed by Speaker in open session.

The following bills were read second time, and referred to Committees as indicated:

Senate Bill No. 30, by Mr. Stewart, Senate Bill No. 93, by Mr. Roddie, and Senate Bill No. 85, by Messrs. Graham and Franklin, to the Committee on General Appropriations.

Senate Bill No. 115, by Thomas, to the Committee on Judiciary and Judicial Departments.

Messenger arrived from the Senate bearing the following messages, which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following House Joint Resolution 5, by Messrs. Wortman and Terral, amended by the Senate and which are herewith transmitted to your Honorable body for consideration, with the Senate amendments.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives that the Senate declines to recede from its amendments to House Bill 96, and requests a conference. Senators Blair, Memminger and Russell, have been appointed to confer with a like Committee from the House.

FINLEY, Secretary.

On motion by Mr. Smith (of Caddo), Messrs. Smith (of Caddo), Anthony and Jones were appointed a conference committee on House Bill No. 96.

Senate Amendments to House Joint Resolution No. 5, by Messrs. Wortman, Terral et al were read.

Mr. Terral moved that the House agree to Senate amendments.

Roll call had thereon resulted as follows:

Ayes: Acton, Anderson, Anthony, Ashby, Bell, Bonar, Boyle, Bryan, Burnette, Casteel, Charles, Clark, Cook, Cope, Covey, Coyne, Dunn, Durant, Durham, Earle, Edgington, Ewell, Faulkner, Gilmer, Glover, Hamlin, Harrison, Haymes, Heim, Howe, Huddleston, Ireton, Jacobs, Jahn, Japp, Johnson, Jones, King, Knox, Lewis, Lincoln, Lockwood, Lovelace, McDuffee, McElhaney, Maris, Mathies, Maxey, Merrick, Millsaps, Moore (of Washington), Murphy, Paschal, Porter, Price, Putnam, Ratcliff, Ratliff (of Johnston), Ratliff (of Pontotoc), Reeve, Rogers, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Shearer, Sherman, Smith (of Caddo), Smith (of Custer), Smith (of Delaware), Smith (of Grant), Stull, Sullivan, Tate, Terral, Tillotson, Tooley, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whayne, Whitson, Williams, Wilson (of Greer), Wortman, Mr. Speaker (B. F. Wilson). Total—91.

Nays: None.

Absent: Bridges, Brownlee, Butts, Calhoun, Carson Compton, Dixon, Hughes, Humphreys, Hutchin, Moore (of Johnston), Parsons, Partridge, Rider, Sexton, Simmons, White. Total—17.

Mr. Speaker declared that motion carried.

On motion by Mr. Porter, the Special Committee on the Calendar was instructed to make Senate Bill No.

60, Special Order for Friday, March 11, at two o'clock, p.m.

The following House Resolution No. 31, was read and adopted by unanimous vote:

RESOLUTIONS OF RESPECT.

WHEREAS, the Grim Reaper has entered the family of our friend and colleague, John M. Moore Representative from Johnston and Coal Counties, removing therefrom its honored head, the father of our colleague, a man ripe in years and enjoying the esteem of his fellow citizens to the full, casting over the family, as well as our said colleague, that gloom and grief inherent to the tie that makes the world kin.

THEREFORE BE IT RESOLVED, That we extend to the bereaved family and particularly to our friend and colleague Hon. John M. Moore, our heartfelt sympathy in this hour of sorrow, and depricate with him the loss of a strong man, a good citizen and an indulgent father.

AND BE IT FURTHER RESOLVED. That the context of this resolution be spread upon the journal and an engrossed copy be furnished the said John M. Moore, and one to his family.

Respectfully submitted,
J. M. RATLIFF,
GEORGE E. JAHN,
EDWARD MERRICK,
J. W. McDUFFEE,

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Rev. Randolph A. Cook, of Enid, Candidate for Congress from the first District, was invited to the Speaker's Stand, and deliver an address.

Messenger arrived from the Senate bearing the following messages which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the signing by the President pro tem of the Senate of the following: Enrolled Bills House Bills 76, Senate Bills 92, 76, 99, and Senate Concurrent Resolution 20 which are herewith transmitted to your Honorable body.

FINELY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following Senate Concurrent Resolution 24, by Williams, engrossed copies which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following Senate Bills 104, by Taylor and Williams, 116 by Wynne, 122, Allen, Engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINELY, Secretary.

Enrolled copies of amended Senate Bill No. 76, Senate Bill No. 92, Senate Bill No. 99, and Senate Concurrent Resolution No. 23 were signed by the Speaker in open session after being read at length.

Mr. Harrison, Speaker pro tempore called to the chair and presided.

Mr. Speaker pro tempore announced the resignation of Ch[] Enrolling and Engrossing Clerk, Neely, which was accepted on ra[]tion by Mr. Tillotson.

Senate Concurrent Resolution No. 2, by Mr. Williams, was read.

Senate Bill No. 53, by Mr. Russell, was read third time, as roll call had thereon resulted as follows:

Ayes: Anthony, Ashby, Bell, Boyle, Burnette, Carson, Casteel, Cope, Coyne, Dixon, Durant, Durham, Earle, Faulkner, Gilmer, Glover, Harrison, Haymes, Ireton, Jacobs, Japp, Johnson, King, Lewis, McDuffee, McElhaney, Mathies, Maxey, Millsaps, Paschal, Putnam, Ratcliff, Ratliff (of Johnston), Ratliff (of Pontotoc), Reeve, Rogers,

* * *

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of Representatives that the Senate declines to concur with the House amendments to Senate Bill No. 1, and asks the House to recede.

FINELY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives that the Senate has declined to pass House Bill 124, by Sullivan.

FINLEY, Secretary.

Mr. Jones moved that the House recede from its amendments to Senate Bill No. 1.

Mr. Durham moved as substitute motion that the House refuse to recede from its amendments to Senate Bill No. 1, and ask the Senate for a Conference.

Motion by Mr. Durham carried.

Mr. Speaker resumed the chair.

The following committee reports were received and read:

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 185 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 184, with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Enrollment, beg leave to report that we have carefully compared the enrolled copy of House Bill No. 107 with the engrossed copy thereof and find said enrollment to be correct and in proper form and it is herewith transmitted to you for your signature.

Respectfully submitted,
WHAYNE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Enrollment, beg leave to report that we have carefully compared the enrolled copy of House Joint Resolution No. 5 with the engrossed copy thereof and find said enrollment to be [p.547] correct and in proper form and it is herewith transmitted to you for your signature.

Respectfully submitted,
BRYAN, Chairman.

MR. SPEAKER:

We, your Committee on Enrollment, beg leave to report that we have carefully compared the enrolled copy of House Bill No. 14, with the engrossed copy thereof and find said enrollment to be correct and in proper form and it is herewith transmitted to you for your signature.

Respectfully submitted,
BRYAN, Chairman.

Engrossed copies of House Bills Nos. 184 and 185 were signed by the Speaker in open session.

Enrolled copies of House Bills Nos. 14, 107 and House Joint Resolution No. 5 were signed by the Speaker in open session, after being read at length.

Mr. Speaker announced certain changes made in the enrolling and engrossing department, which were sustained by the House on motion by Mr. Durant.

Senate Joint Resolution No. 1, as follows, was signed by the Speaker in open session:

SENATE JOINT RESOLUTION NO. 1.

Being a proposed amendment to the Constitution of the state of Oklahoma providing that all taxes paid by certain public service corporations for maintenance of common schools be distributed as are other common school funds in this State.

Be it resolved by the Senate and House of Representatives of the State of Oklahoma:

That the Secretary of State is hereby instructed to propare and submit to the voters of this State in accordance with the law, at the next general election held throughout the State, the following proposed amendment to the Constitution of the State of Oklahoma.

Should a majority of all votes cast in the election at which such propose amendment is voted on vote in favor of said amendment, the same shall thereupon become a part of the Constitution of this State and shall constitute a new section to be known as Section Twelve A (12a) of Article Ten (10) and shall read a follows:

Section 12. A. The Legislature shall provide for the payment into the public school funds of this State all taxes collected for the maintenance of the common schools of this State, and which are levied upon the property of any railroad company, pipe line company, telegraph company or other public service corporation which operates [p.548] in more than one county in this State, and such taxes shall be distributed as are other common school funds of this State. Provided, this shall not be construed to apply to any county levy made in aid of the common schools of such county as authorized in Section Nine (9) of this Article.

Passed by the Senate January 27, 1910.

J. C. GRAHAM,
President pro tempore of the Senate.

Passed by the House of Representatives March 10, 1910.

BEN F. WILSON,
Speaker of the House of Representatives.

On motion by Mr. Tillotson, House resolved itself into Committee of the Whole to consider Special Orders on the House Calendar, with Mr. Faulkner presiding.

Mr. Speaker resumed the chair.

The following report was read and adopted:

MR. SPEAKER:

The committee of the Whole House, to whom was referred House Bill No. 36, by Mr. Ross; House Bill No. 139, by Mr. Wallace; House Bill No. 37, by Mr. Ross; Senate Bill No. 78, by Mr. Morris; Senate Joint Resolution No. 7, by Mr. Blair; House Bills Nos. 176, by Mr. Savage (of Greer), and Lovelace; 167, by Mr. Rogers; 168, by Mr. Rogers; 175, by Mr. Ratcliff; 174, by Mr. Ireton; 134, by Mr. Jones; 171, by Mr. Cope, and 183, by Mr. Durant, report that we have considered same, and recommend that House Bills Nos. 36, 139, 37, and Senate Bill No. 78 and Senate Joint Resolution No. 7, be made Special orders for Friday, March 11, at ten o'clock a. m.; that House Bill No. 176, be re-committed to Committee on State and School Lands; that House Bill No. 167 do not pass; that House Bill No. 168 do pass as amended, and that House Bills Nos. 175, 174, 134, 171, and 183 do pass.

FAULKNER, Chairman.

Messenger arrived from the Senate bearing the following messages, which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the signing by the President pro tempore of the Senate of the following:

Enrolled House Joint Resolution 5, which is herewith transmitted to your Honorable body.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the signing by the President pro tempore of [p.549] the Senate of the following: Enrolled House Bills 84, 107, which are herewith transmitted to your Honorable body.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bill 126, by Taylor, House Concurrent Resolution 14, by Burnette, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inquire of the House of Representatives if the House has appointed its Conference Committee on Senate Bill No. 1, and the names of the members so appointed.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives that the Senate has declined to agree to Conference report on House Bill

113, and asks for further conference, Senators Blair, Dunn, and Billups, have been appointed to confer with a like committee from the House.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives that the Senate has agreed to House amendments to Senate Bill 81, and has passed the bill as so amended by a vote of 33 to 0.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: House Bill 96, as amended by Conference, said Conference report having been previously adopted, which are herewith transmitted to your honorable body for consideration.

FINLEY, Secretary.

Mr. Rogers has moved as follows:

MR. SPEAKER:

I move to reconsider the vote by which the report of the Committee of the Whole was adopted so far as it relates to House Bill No. 167.

Roll call had thereon resulted as follows:

Ayes: Anderson, Ashby, Bell, Bonor, Boyle, Burnette, Casteel, Dixon, Durham, Earle, Ewell, Faulkner, Glover, Harrison, Haymes

* * *

APPENDIX H

Doc 303-14

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January 29, 1985

MEMORANDUM

Mr. William Benson
1128 E. 160th Place
South Holland, IL 60473

Dear Mr. Benson:

I have attached a true and correct copy of the Journal of the Oklahoma House of Representatives for Thursday, March 3, 1910 (43rd legislative day) as found on pages 456, 457, 458, and 462.

Sincerely,

/s/ Oliver Delaney
Oliver Delaney, Head
Legislative Reference

OD/pb
Encl.

Acknowledged before me this 29th day of January 1985.

/s/ Mary Anne Watts
Mary Anne Watts
Notary Public

My Commission expires: 2-29-88

290a

Legislative Reference

JOURNAL

of the

House of Representatives

of the

EXTRAORDINARY SESSION

of the

Second Legislature of the State of Oklahoma

[Great Seal of the State of Oklahoma - 1907]

Session Opened January 20, 1910
Session Closed March 19, 1910

59 Days

1910
LEADER PRINTING CO.
GUTHRIE, OKLA

[p.456]

Maris, Mathies, Merrick, Millsaps, Moore (of Johnston), Moore (of Washington), Murphy, Paschal, Price, Ratliff (of Johnston), Ratliff (of Pontotoc), Rider, Rogers, Ross, Rotenberry, Sexton, Shearer, Sherman, Smith (of Custer), Smith (of Delaware), Stull, Sullivan, Tate, Terral, Tooley, Tucker, Turner, Utterback, Vogle, Wallace, Ward, Watrous, Whitson, Williams, Wortman, Mr. Speaker (Ben F. Wilson). Total—75.

Nays: Durham, King. Total—2.

Absent: Bell, Bonor, Brownlee, Bryan, Butts, Calhoun, Compton, Cope, Edgington, Gilmer, Hamlin, Howe, Lincoln, Lockwood, Maxey, Parsons, Partridge, Porter, Putnam, Ratcliff, Reeve, Savage (of Greer), Savage (of Jefferson), Semple, Simmons, Smith (of Caddo), Smith (of Grant), Tillotson, Whayne, White, Wilson (of Greer). Total--31.

Mr. Speaker declared the motion duly carried.

Senate amendments to House Bill No. 14 were read.

Mr. Anthony moved that the House do not agree to Senate amendments to House Bill No. 14, and ask the Senate to recede from their amendments.

Carried.

On motion by Mr. Lovelace, the House resolved itself into Committee of the Whole to consider House Bills on the Calendar, with Mr. Johnson presiding.

Mr. Speaker pro tempore resumed the chair.

The following report was read and adopted:

MR. SPEAKER:

The Committee of the Whole House, to whom was referred House Bill No. 59, by Mr. Earle; Committee

Substitute for House Bill No. 126, by Mr. Burnette, and No. 128 by Mr. Japp; House Bills Nos. 130, by Mr. Maxey; No. 131, by Mr. Maxey, No. 139, by Mr. Wallace; No. 145, by Mr. Glover; No. 112, by Mr. Wortman; No. 141, by Mr. Tillotson; No. 37 by Mr. Ross; No. 147, by Mr. Haymes, House Joint Resolution No. 5, by Messrs. Wortman and Terral; House Bills Nos. 164, by Messrs. Burnette, et al; 144, by Mr. Ashby; 122, by Mr. Japp; 159, by Mr. Ross, and 161, by Mr. Cope, report that we have considered same, and recommend that House Bill No. 59 be referred back to Committee on Criminal Jurisprudence; that Committee Substitute for House Bills Nos. 126 and 128 do not pass; that House Bill No. 130 do not pass; that House Bill No. 131 do not pass; that House Bill No. 139 be made Special Order for Monday at 2 o'clock P. M.; that House Bill No. 145 do pass as amended; that House Bill No. 112 do not pass; that House [p.457] Bill No. 141 do pass; that House Bill No. 37 be made Special Order for Monday at 2 P. M.; that House Bill No. 147 do pass; that House Joint Resolution No. 5 do pass; that House Bill No. 164 do pass; that House Bill No. 144 do pass; that House Bill No. 122 do not pass; that House Bill No. 159 do pass as amended; that House Bill No. 161 do pass.

JOHNSON, Chairman.

On motion by Mr. Tillotson, all bills recomended favorably by the two Committees of, the Whole House were ordered engrossed, and placed on third reading and final passage.

Messenger arrived from the Senate bearing the following messages, which were read:

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives that the Senate declines to recede from its amendments to House Bill No. 14, by Anthony, and asks for a conference, Senators Blair, Strain and Thomas have been appointed to confer with a similar committee from the House.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the signing by the President Pro Tempore of the Senate of the following: Senate Bill No. 61 and House Concurrent Resolution No. 10, which are herewith transmitted to your Honorable body for signature of Speaker.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bill No. 112, by Russell, engrossed copy of which are herewith transmitted to your Honorable body for consideration.

FINLEY, Secretary.

SPEAKER OF THE HOUSE OF REPRESENTATIVES:

Sir: I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: Senate Bills Nos. 69, by Blair; 90, by Cordell; 98, by Roddie, and 82, by Taylor, engrossed copies of which are herewith transmitted to your Honorable body for consideration.

FINELY, Secretary.

The Speaker signed enrolled copy of Senate Bill No. 61, in open session, after being read at length.

House Journal for Wednesday, March 2, was corrected on page 16, to show Mr. Huddleston voting "aye," instead of absent.

[p.458]

On motion by Mr. Merrick, Journal for Wednesday, March 2, was approved as corrected.

The following bills were introduced and read the first time:

SENATE BILL NO. 69—BY MR. BLAIR.

Entitled: "An Act to legalize bond issues of municipal corporations, including school districts of this State; and declaring an emergency."

SENATE BILL NO. 82—BY MR. TAYLOR.

Entitled: "An Act providing an appropriation for the maintenance of the Oklahoma Industrial Institute and College for Girls, for the scholastic year beginning July 1, 1910, and ending July 1, 1911, and for other miscellaneous purposes, and declaring an emergency."

SENATE BILL NO. 98—BY MR. RODDIE.

Entitled: "An Act providing for the support, maintenance and equipment of the East Central State Normal School located at Ada; and declaring an emergency."

SENATE BILL NO. 90—BY MR. CORDELL.

Entitled: "An Act to appropriate $320.97 to pay for the services and expenses of William Tilghman as scout during the Snake Indian Uprising."

SENATE BILL NO. 109—BY MR. BILLUPS.

Entitled: "An Act locating the Southwestern District Agricultural College at Cordell, Washita County, Oklahoma; and making an appropriation therefor."

SENATE BILL NO. 112—BY MR. RUSSELL.

Entitled: "An Act to be entitled: An Act to amend Section 1 of Article 1, Chapter 37, of the Session Laws of Oklahoma, 1909."

HOUSE BILL NO. 172—BY MR. COYNE.

Entitled: "An Act making an appropriation for the purpose of reimbursing the Sheriff of Craig County for the maintenance of State prisons."

HOUSE BILL NO. 173—BY MESSRS. MURPHY AND COPE.

Entitled: "An Act authorizing condemnation of private or public property for public use by counties, cities, townships and school districts, created and existing under the laws of this State, and regulating the method of procedure for the condemnation and taking of such property by the right of eminent domain."

* * *

[p.462]

dleston, Hughes, Humphreys, Ireton, Jacobs, Japp, Johnson, Jones, King, Knox, Lewis, Lockwood, McDuffee, McElhaney, Maris, Mathies, Maxey,

Merrick, Millsaps, Moore (of Washington), Murphy, Price, Putnam, Ratcliff, Ratliff (of Pontotoc), Rider, Ross, Rotenberry, Savage (of Greer), Savage (of Jefferson), Semple, Shearer, Sherman, Simmons, Smith (of Caddo), Smith (of Delaware), Smith (of Grant), Stull, Sullivan, Tate, Tillotson, Turner, Wallace, Watrous, Whitson, Wortman, Mr. Speaker (Ben F. Wilson). Total–70.

Nays: Bridges, Earle, Edgington, Hamlin, Harrison, Heim, Jahn, Lovelace, Paschal, Moore (of Johnston), Rodgers, Sexton, Smith (of Custer), Terral, Tooley, Tucker, Utterback, Vogle, Ward. Total–19.

Absent: Bell, Bonar, Boyle, Brownlee, Butts, Calhoun, Compton, Cook, Hutchin. Lincoln, Parsons, Partridge, Porter, Ratliff (of Johnston), Reeve, Whayne, White, Williams, Wilson (of Greer). Total–19.

Mr. Speaker declared that House Bill No. 116, having received the constitutional majority, had duly passed, but that the emergency clause, not having received the constitutional majority, had lost.

The following committee reports were received and read:

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Joint Resolution No. 5 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 147 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 145 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

MR. SPEAKER:

We, your Committee on Engrossment, beg leave to report that we have carefully compared House Bill No. 144 with the original draft and find said engrossment to be correct and in proper form.

Respectfully submitted,
BURNETTE, Vice Chairman.

APPENDIX I

Doc 303-15

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: United States of America
   This public document

2. Has been signed by Mary Ann Watts

3. Acting in the capacity of Notary Public for Oklahoma County, Oklahoma

4. Bears the seal/stamp of Mary Ann Watts

CERTIFIED

5. At Oklahoma City, Oklahoma, U.S.A.

6. The 18th day of December, 1984

7. By Esta M. Phipps, Assistant Secretary of State

8. No. A-327

9. Seal/stamp of the State of Oklahoma

10. Signature:

/s/ Esta M. Phipps
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December 18, 1984

This is to certify that the attached pages are a true and correct copy of the materials printed and published in the Journal of the Proceedings of the Senate of the Extraordinary Session of the Second Legislature of the State of Oklahoma for the year of 1910.

Signed

/s/ Oliver Delaney
Oliver Delaney, Head
Legislative Reference

Acknowledged before me this 18th day of December 1984.

/s/ Mary Anne Watts
NOTARY PUBLIC

My Commission expires 2-29-88

301a

JOURNAL

of the

Proceedings of the Senate

of the

EXTRAORDINARY SESSION

of the

Second Legislature of the State of Oklahoma

[Great Seal of the State of Oklahoma - 1907]

Session Opened January 20, 1910
Session Closed March 19, 1910

59 Days

1910
LEADER PRINTING CO.
GUTHRIE, OKLA

[p.388]

Nays: Messrs. Cordell, Davis and Memminger. Total—3.

Absent: Messrs. Beeler, Brownlee, Chapman, Cloonan, Hatchett, Moore, Newell, Potter, and Soldani. Total—9.

The emergency having received a two-thirds majority vote of all the members elected to and constituting the Senate, the President declared same passed.

Senator Thomas reported on behalf of the Committee on Legal Advisory as follows:

MR. PRESIDENT:

We, your Committee on Legal Advisory, to whom was referred Senate Joint Resolution No. 12, same being a proposed amendment to Section 9, Article 9, of the Constitution, having had the same under consideration, beg to report same back to the Senate with the recommendation that it be ordered printed and placed on the calendar under the head of general orders.

J. ELMER THOMAS, Chairman.

Report received and bill ordered placed upon the calendar under head of general orders.

Senator Billups reported on behalf of the Committee on Privileges and Elections as follows:

MR. PRESIDENT:

We, your Committee on Privileges and Elections, to whom was referred House Bill No. 107, have had the same under consideration and recommend that it do pass.

RICHARD A. BILLUPS, Chairman

Report received and bill ordered placed upon the calendar under head of general orders.

Senator Yeager introduced the following bill:

SENATE BILL NO. 117—BY MR. YEAGER:

An act for the removal of all officers of the State and its municipalities not liable to impeachment, and providing for procedure therein.

The Senate went into the Committee of the Whole to consider reveneu bills on the calendar, with Senator Davis in the chair.

The President took the chair.

The engrossed copy of House Bill No. 109, as amended by the Senate, was signed by the President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

The Committee of the Whole resumed business.

The President took the chair and the Committee of the Whole arose and reported as follows:

[p.389] MR. PRESIDENT:

We, your Committee of the Whole, having had under consideration House Bill No. 84 and House Bill No. 76, recommend that they be made a special order for 10 A. M. tomorrow.

CLARENCE DAVIS, Chairman.

Report adopted.

Senator Graham introduced the following Concurrent Resolution:

SENATE CONCURRENT RESOLUTION NO. 23—BY MR. GRAHAM

A Concurrent Resolution ratifying an amendment proposed by the Sixty-first Congress of the United States of America on the 15th day of March, 1909, to the Constitution of the United States and designated as Article I.

WHEREAS, The Sixty-first Congress of the United States of America at its first session, begun and held at the city of Washington, on Monday, the 15th day of March, 1909, by joint resolution proposed an amendment to the Constiution of the United States, in words and figures as follows, to-wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"'Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'"

Now, Therefore, be it resolved by the Senate and House of Representatives of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States is hereby ratified.

The question being shall the resolution be adopted, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Colville, Cordell, Cunningham, Curd, Davis, Echols, Eggerman, Franklin, Graham, Goulding, Keys, Landrum, Memminger, Mitchell, Morris, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Warren, Williams Wynne and Yeager. Total—32.

Nays: None.

* * *

[p.396]

The engrossed copy of Senate Bill No. 89 was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House informing the Senate that in conformity with the request of the Senate the House had agreed to a conference on House Bill No. 14, by Anthony and that the Speaker had appointed Messrs. Anthony, King and Utterback as such committee on the part of the House.

Senator Allen called up the report of the Committee of the Whole on Senate Bill No. 75.

Senator Allen moved that Senate Bill No. 75 be recommitted to the Committee of the Whole with instructions to amend the report to read "do pass," instead of "indefinitely postponed,"

Vote was taken. Motion carried.

The time having arrived for special orders, the Senate went into the Committee of the Whole, to consider revenue bills, with Senator Allen in the chair.

The President took the chair and the Committee of the Whole arose and reported as follows:

MR. PRESIDENT:

We, your Committee of the Whole, having had under consideration House Bill No. 84, recommend that the same do pass as amended; as to House Bill No. 76, recommend that the same do pass as amended; as to Senate Bill No. 72, recommend that same be laid over until this afternoon; as to House Bill No. 146, recommend that the same do pass and be placed upon third reading and final passage this day; as to House Bill No. 90, recommend that the same do pass and be placed upon third reading and final passage this day; as to House Bill No. 94, recommend that same do pass and be put upon third reading and final passage this day.

HARRY K. ALLEN,
Chairman Committee of the Whole

Report adopted.

On motion of Senator Stafford, the Senate went into the Committee of the Whole, with Senator Allen in the chair.

The President took the chair and the Committee of the Whole arose.

The enrolled copy of Senate Concurrent Resolution No. 11 was read the fourth time at length, and signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

The Committee of the Whole resumed business.

The President took the chair and the Committee of the Whole arose and reported as follows:

[p.397] MR. PRESIDENT:

We, your Committee of the Whole, having had under consideration Senate Bill No. 105, recommend that the same do pass; as to Senate Bill No. 96, recommend that the same do pass; as to Senate Bill

No. 108, recommend that the same do pass as amended; as to Senate Bill No. 68, recommend that the same be passed over, printed and retain its place on the calendar; as to Senate Bill No. 100, recommend that the same do pass; as to Senate Bill No. 110, recommend that the same do passc as to Senate Bill No. 111, report progress and ask leave to sit again.

HARRY K. ALLEN,
Chairman Committee of the Whole

Report adopted.

The hour of recessing having arrived, the Senate recessed until 2 P. M.

AFTERNOON SESSION.

The Senate met at 2 P. M. pursuant to recessing.

Called to order by President Bellamy.

The President announced a quorum present.

Senate Concurrent Resolution No. 20, by Mr. Landrum, by request, was read at length.

Vote was taken. The resolution was adopted.

A message was received from the House transmitting House Joint Resolution No. 5 by Messrs. Wortman and Terral of the House and Graham of the Senate, which was read the first time.

HOUSE JOINT RESOLUTION NO. 5—BY MESSRS. WORTMAN AND TERRAL OF THE HOUSE AND GRAHAM OF THE SENATE.

A Resolution ratifying a proposed amendment to the Constitution of the United States, providing for the levying and collecting of taxes on incomes.

A message was received from the House transmitting House Bill No. 164, by Messrs. Burnette, Reeves and Smith (of Custer), which was read the first time.

HOUSE BILL NO. 164—BY MESSRS. BURNETTE, REEVES AND SMITH (of Custer).

An Act to constitute Custer County a Superior Court District and to establish a Superior Court in said county.

A message was received from the House transmitting the enrolled copies of House Bills Nos. 132 and 148, and Senate Concurrent Resolution No. 11.

* * *

[p.404]

The following bills were read the second time and referred to the following committees:

House Joint Resolution No. 5, by Messrs. Wortman and Terral of the House and Graham of the Senate, to Committee on Legal Advisory.

House Bill No. 164, by Messrs. Burnette, Reeves and Smith (of Custer), to Committee on Judiciary No. 2.

Senate Bill No. 119, by Landrum, to Committee on Judiciary No. 2

Senate Bill No. 120, by Mr. Billups, to Committee on Privileges and Elections.

House Bill No. 116, by Messrs. Bryan and Charles, to Committee on Legal Advisory.

Senate Bill No. 121, by Mr. Williams, to Committee on Privileges and Elections.

Senate Bill No. 122, by Mr. Allen, to Committee on Appropriations.

BILLS ON THIRD READING

House Bill No. 94 was read the third time at length.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Beeler, Billups, Blair, Colville, Cordell, Curd, Denton, Franklin, Graham, Keys, Memminger, Mitchell, Morris, Newell, Potter, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrels, Taylor, Warren, Williams and Yeager. Total—26.

Nays: None.

Absent: Messrs. Allen, Brownlee, Chapman, Cloonan, Cunningham, Davis, Echols, Eggerman, Goulding, Hatchett, Landrum, Moore, Redwine, Soldani, Thomas, Updegraff and Wynne. Total—17.

The bill having received a majority vote, the President declared the same passed.

The emergency was laid over.

House Bill No. 90 was read.

Senator Landrum moved that the bill be passed over until Monday.

Vote was taken. Motion carried.

Senate Bill No. 70 was read at length the third time.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Chapman, Colville, Cordell, Curd, Denton, Franklin, Hatchett, Keys, Landrum, Memminger, Mor-[p.405]ris, Mitchell, Moore, Newell, Potter, Roddie, Russell, Smith Stafford, Stewart, Strain, Sorrells, Taylor, Warren, Williams and Yeager. Total—29.

Nays: Messrs. Beeler and Cunningham. Total—2.

Absent: Messrs. Cloonan, Davis, Echols, Eggerman, Graham, Goulding, Soldani, Updegraff, Wynne, Brownlee, Redwine and Thomas. Total—12.

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed.

House Bill No. 52 was read the third time at length.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Beeler, Billups, Blair, Brownlee, Chapman, Colville, Cordell, Cunningham, Curd, Denton, Franklin, Hatchett, Keys, Landrum, Memminger, Mitchell, Moore, Morris, Newell, Potter Redwine, Roddie, Russell, Smith Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Warren, Williams and Yeager. Total—34.

Nays: None.

Absent: Messrs. Cloonan, Davis, Echols, Eggerman, Graham, Goulding, Soldani, Updegraf and Wynne. Total—9.

The bill having received a majority of all the members elected to and constituting the Senate, the President declared same passed.

Senate Bill No. 105 was read the third time at length.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Beeler, Billups, Blair, Chapman, Colville, Cordell, Cunningham, Denton, Franklin, Graham, Keys, Landrum, Memminger, Mitchell, Moore, Morris, Newell, Redwine, Russell, Smith Stafford, Strain, Sorrells, Taylor, Thomas, William and Yeager. Total—28.

Nays: Messrs. Curd, Hatchett, Potter, Roddie, Stewart and Warren. Total—6.

Absent: Messrs. Brownlee, Cloonan, Davis, Echols, Eggerman, Goulding, Soldani, Updegraff and Wynne. Total—9.

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed.

House Bill No. 129 was read at length the third time.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Beeler, Billups, Blair, Chapman, Cordell, Curd, Denton, Franklin, Graham, Keys, Landrum, Memminger, Mitch-

* * *

[p.458]

Absent: Messrs. Beeler, Brownlee, Chapman, Cloonan, Colville, Cunningham, Curd, Echols, Franklin, Moore, Potter, Roddie, Soldani, Updegraff and Warren. Total—15.

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed as amended.

Senator Thomas reported on behalf of the Committee on Legal Advisory as follows:

MR. PRESIDENT:

We, your Committee on Legal Advisory, to whom was referred House Joint Resolution No. 5, beg leave to report back to the Senate that the same do pass as herein amended, that an amended copy is hereto attached.

J. ELMER THOMAS, Chairman

Report received and resolution placed on the calendar under head of general orders.

On request of Senator Allen, the rules were suspended by unanimous consent and House Bill No. 107 was placed on third reading and final passage.

The Journal of the Forty-seventh day's session was approved as corrected.

House Bill No. 107 was read the third time at length.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Brownlee, Colville, Cordell, Cunningham, Denton, Eggerman, Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Morris, Newell, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Updegraff, Warren Williams, Wynne and Yeager. Total—33.

Nays: Messrs. Cloonan and Curd. Total—2.

Absent: Messrs. Beeler, Chapman, Davis, Echols, Franklin, Moore, Potter, and Soldani. Total—8.

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed.

The engrossed copy of House Bill No. 107 was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House transmitting Senate Bill No. 36, by Mr. Billups.

Senate Bill No. 115 was read the third time at length.

Senator Taylor moved to amend the bill by striking out "1909" and inserting in lieu thereof "1910."

Vote was taken. Amendment was adopted.

[p.459] The question being shall the bill pass, as amended, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Cordell, Davis, Eggerman, Franklin, Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Morris, Newell Redwine, Roddie, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Russell, Williams, Wynne and Yeager. Total—29.

Nays: Messrs. Brownlee, Chapman, Cloonan, Colville, Cunningham, Curd and Updegraff. Total—7.

Absent: Messrs. Beeler, Denton, Echols, Moore, Potter, Soldani and Warren. Total—7

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed as amended.

The question being shall there be an emergency declared, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Cordell, Davis, Denton, Eggerman, Franklin, Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Morris, Newell, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Thomas, Williams, Wynne and Yeager. Total—30.

Nays: Messrs. Brownlee, Chapman, Cloonan, Colville, Cunningham and Updegraff. Total—6.

Absent: Messrs. Beeler, Curd, Echols, Moore, Potter, Soldani and Warren. Total—7.

The emergency having received a two-third vote of all the members elected to and constituting the Senate, the President declared same passed.

Senator Thomas moved to re-consider the vote by which the bill had passed.

Senator Thomas moved to lay the motion to reconsider the vote by which the bill had passed on the table.

Vote taken. Motion carried.

The engrossed copy of Senate Bill No. 115 was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House transmitting Senate Bill No. 18, by Mr. Cordell, as amended by the House.

Senator Thomas was called to the Chair.

Senator Blair asked unanimous consent to offer the following revised amendment for the Committee amendment proposed by Senator Memminger.

Request granted.

* * *

[p.462]

Nays: Messrs. Cloonan, Davis, Stafford, Thomas and Warren. Total—5.

Absent: Messrs. Beeler, Brownlee, Echols, Graham, Memminger, Moore, Potter, Roddie, Russell and Soldani. Total—10.

The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed, as amended.

Senate Bill No. 116 by Mr. Wynne was read the third time at length.

Senator Wynn asked unanimous consent to amend the title to read as follows:

There being no objection request was granted.

Senator Wynne asked unanimous consent to amend the title.

"Same being an act in relation to consolidated school districts."

Vote was taken, and amendment adopted.

The question being shall the bill pass, as amended, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Brownlee, Chapman, Colville, Cordell, Cunningham, Davis, Denton, Eggerman, Graham, Goulding, Hatchett, Keys, Landrum, Mitchell, Morris, Newell, Redwine, Russell, Smith, Stafford, Stewart, Strain, Sorrels, Taylor, Thomas, Updegraff, Warren, Williams, Wynne and Yeager. Total—33.

Nays: Messrs. Cloonan and Curd. Total—2.

Absent: Messrs. Beeler, Echols, Franklin, Memminger, Moore, Potter, Roddie and Soldani. Total—8.

The bill having received a majority vote of all the members elected to and constituting the Senate the President declared same passed.

Senate Bill No. 104 was read the third time at length.

The question being shall the bill pass, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Blair, Chapman, Cloonan, Colville, Cordell, Cunningham, Curd, Davis, Franklin, Graham, Goulding, Hatchett, Keys, Landrum, Mitchell, Morris, Newell, Redwine, Smith, Stafford, Stewart, Strain, Sorrels, Taylor, Thomas, Updegraff, Warren, Williams, Wynne and Yeager. Total.—31.

Nays: None.

Absent: Messrs. Beeler, Billups, Brownlee, Denton, Echols, Eggerman, Memminger, Moore, Potter, Roddie, Russell and Soldani. Total—12.

[p.463] The bill having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed.

On motion of Senator Stafford the Senate went into the Committee of the Whole to consider special orders with Senator Denton in the Chair.

The President took the chair and the committee of the whole arose and the engrossed copy of House Bill No. 96 was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

The committee of the whole resumed business.

The President took the chair and the committee of the whole arose and reported as follows:

MR. PRESIDENT:

We, your committee of the Whole having had under consideration Senate Bill No. 19 recommend that the same be stricken from the calendar, as to Senate Bill No. 118 recommend that the same do pass as amended, as to Senate Bill No. 122 recommend that the same do pass as amended, as to Senate Bill No. 46 report progress and ask leave to sit again.

H. J. DENTON,
Chairman Committee of the Whole

Report adopted.

A message was received from the House informing the Senate that the House had refused to agree to Senate amendments to House Bill No. 96 and asking the Senate to recede.

Senator Blair moved that the Senate insist upon its amendment and ask for a conference on same and that a committee be appointed on same.

Vote taken. Motion carried.

The President appointed Messrs. Blair, Memminger, and Russell as such conference committee on the part of the Senate.

Senator Thomas asked unanimous consent to withdraw the report of the Committee on Legal Advisory on House Joint Resolution No. 5

Request granted.

Senator Thomas reported on behalf of the committee on Legal Advisory as follows:

MR. PRESIDENT:

We, your Legal Advisory committee, to whom was referred House Joint Senate Resolution No. 5 by Wortman of Rogers, Terral of Kiowa, and Graham of the Senate, beg leave to report back to the Senate that said resolution do pass as amended.

First: Amend the title to read as follows:

[p.464] "A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN."

Following the enacting clause, amend the first paragraph to read as follows:

"WHEREAS, The sixty-first congress of the United States of America at its first session begun and held at the city of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows: to-wit:

Amend the second paragraph to read as follows:

"Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the constitution of the

United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution."

Amend the third paragraph by inserting after the word "derived" the following: "without apportionment among the several states."

Amend the last paragraph so as to read as follows: "Now, therefore BE IT RESOLVED by the House of Representatives and the Senate of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of Americas is hereby ratified.

J. ELMER THOMAS, Chairman

On motion of Senator Thomas the report was adopted.

House Joint Resolution No. 5 as amended by the Senate was read as follows;

House Joint Resolution No. 5 by Messrs. Wortman of Rogers, Terral of Kiowa, and Graham of the Senate.

"A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY-FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA:

[p.465] WHEREAS, The sixty-first Congress of the United States of America at its first session begun and held at the city of Washington, on Monday the fifteenth day of March, one thousand nine hundred and

nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows, to-wit:

"RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein) that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

Article 16. The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

Now, therefore, BE IT RESOLVED, by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States of America is hereby ratified.

The question being shall the resolution pass as amended by the Senate, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, Blair, Brownlee, Chapman, Colville, Cordell, Cunningham, Curd, Davis, Denton, Eggerman, Franklin Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Morris, Newell, Redwine, Roddie, Russell, Smith, Stafford, Stewart, Strain, Sorrels, Taylor, Thomas, Updegraff, Warren, Williams, Wynne and Yeager. Total 37.

Nays: None.

Absent: Messrs. Beeler, Cloonan, Echols, Moore, Potter, and Soldani. Total—6.

The resolution having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed, as amended, by the Senate.

Senator Cordell asked unanimous consent to amend the title to Senate Bill No. 18.

There being no objection the request was granted.

The engrossed copy of House Joint Resolution No. 5 as amended by the Senate was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House transmitting Senate Bill No.81 by Mr. Eggerman as amended by the House.

A message was received from the House transmitting Senate Bill No. 1 by Messrs. Smith of the Senate and Durham of the House

* * *

[p.480]

WHEREAS, The Oklahoma and Territorial State Reports are provided for officers of the county judge and county attorney in each county of the State, and,

WHEREAS, In such calamity these reports are destroyed or have been destroyed and such counties are denied the use thereof.

THEREFORE BE IT RESOLVED, That in any county where these reports have been destroyed by fire or other calamity the State Librarian shall furnish to the said counties, on the requisition of the county commissioners of any such county showing the destruction of such sets of Oklahoma Reports, a new

set for each of said county officers, namely, the county attorney and county judge.

Passed the House of Representatives March 10, 1910.

BEN F. WILSON
Speaker of the House of Representatives.

On motion of Senator Billups the resolution was adopted.

The engrossed copy of House Concurrent Resolution No. 14 was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House transmitting Senate Joint Resolution No. 1, by Mr. Russell.

A message was received from the House transmitting the enrolled copies of Senate Bills Nos. 92, 99, 76 and Senate Concurrent Resolution No. 20, same were ordered transmitted to the Governor.

A message was received from the House informing the Senate that the House had agreed to a conference on House Bill No. 96, by Mr. Smith (of Caddo), and that the Speaker had appointed Messrs. Smith(of Cadoo), Anthony and Jones as a committee on the part of the House.

A message was received from the House informing the Senate that the House had refused to recede from its amendments to Senate Bill No. 1 and asking for a conference on same.

A message was received from the House transmitting the enrolled copy of House Joint Resolution No. 5, signed by the Speaker.

The enrolled copy of House Joint Resolution No. 5 was read the fourth time at length, the title agreed to and signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

A message was received from the House, transmitting the enrolled copy of House Bill No. 14.

A message was received from the House as follows:

The House of Representatives informs your Honorable Body that the House has reconsidered the vote by which House Committee [p.481] Substitute for House Bill No. 109 was passed, for the purpose of amending Section 6, of enrolled bill, in line 8, by striking out the word "less" and substituting in lieu thereof the word "more"; that said amendment was adopted and the bill as amended passed by a unanimous vote of the House and that said bill is herewith transmitted to your Honorable Body with the section as amended attached with the request that the Senate concur in said amendment.

Senator Smith moved that the Senate concur in the House amendments to Committee Substitute for House Bill No. 109.

Senator Davis made a point of order that the bill was the property of the Senate and that the body had not reconsidered the vote by which the bill passed.

The President held that the vote by which the bill had passed would have to be reconsidered before the bill could be amended.

Senator Smith moved that the vote by which House Bill No. 109 had passed by reconsidered.

After discussion by Senators Thomas and Blair further action on House Bill No. 109 was deferred.

The President appointed Senators Hatchett, Davis and Billups as a conference committee on the part of the Senate on House Bill No. 113.

On motion of Senator Williams the Senate agreed to the House amendments to Senate Bill No. 81.

The enrolled copy of House Bill No. 14 was read the fourth time at length, the titles agreed to and signed

by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.

Senate Bill No. 81 as amended by the House was read at length.

The question being shall the bill pass as amended, the roll was called, the vote resulting as follows:

Yeas: Messrs. Allen, Billups, lBair, Cloonan, Colville, Cordell, Cunningham, Curd, Davis, Denton, Eggerman, Franklin, Graham, Goulding, Hatchett, Keys, Landrum, Memminger, Mitchell, Moore, Morris, Newell, Roddie, Smith, Stafford, Stewart, Strain, Sorrells, Taylor, Updegraff, Williams, Wynne and Yeager. Total—33.

Nays: None.

Absent: Messrs. Beeler, Brownlee, Chapman, Echols, Potter, Redwine, Russell, Soldani, Thomas and Warren. Total—10.

The bill having received a majority of the votes of all the members elected to and constituting the Senate, the President declared same passed as amended.

The question being shall there be an emergency declared, the roll was called, the vote resulting as follows:

* * *

APPENDIX J

OFFICE OF THE SECRETARY OF STATE
STATE OF OKLAHOMA

CERTIFICATE

I, the undersigned Secretary of State of the State of Oklahoma, do hereby certify: That I am by law of the State of Oklahoma the custodian of the Oklahoma Constitution and the laws passed by the Oklahoma Legislature, and do hereby certify that the annexed transcript has been compared with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy of:

CORRECTLY ENROLLED
HOUSE JOINT RESOLUTION NUMBER 5
OF THE
OKLAHOMA LEGISLATURE
OF 1910

[Great Seal of the State of Oklahoma - 1907]

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Oklahoma at the City of Oklahoma City this 18th *day of* December, *1984*

/s/ Jeannette B. Edmondson
Secretary of State
By: /s/ Kathy Mason

CORRECTLY ENROLLED HOUSE JOINT RESOLUTION NUMBER 5 OF THE OKLAHOMA LEGISLATURE OF 1910

[Fold-Out Exhibit, see next 2 pages]

A Resolution Ratifying An Amendment Proposed by the Sixty-first Congress of the United States of America, on the Fifteenth Day of March, One Thousand Nine Hundred and Nine, to the Constitution of the United States and Designated as Article Sixteen.

Be it Resolved by the House of Representatives and the Senate of the State of Oklahoma:

Whereas, the Sixty-first Congress of the United States of America at its first session begun and held at the City of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the Constitution of the United States, in words and figures as follows, to wit:——

"Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each House concurring thereto), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:——

Article 16. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several

County Copy
Wilson Roys

BEST AVAILABLE COPY

states, and from any census or enumeration.

Now therefore, Be it Resolved by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

Sam Furlow
Speaker of the House of Representatives

Pro Tem of the Senate.
President of the Senate.

Approved March 14th 1910.
C. N. Haskell
Governor of the State of Oklahoma.

Secretary of State